

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended: March 31, 2019

or

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

For the transition period from _____ to _____

Commission File Number: 000-54960



Nxt-ID, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

46-0678374

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

1627 U.S. 1

Unit 206

Sebastian, FL 32958

(Address of principal executive offices)(Zip Code)

(203) 266-2103

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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

| Title of each class | Trading Symbol(s) | Name of exchange on which registered |
|--|-------------------|--------------------------------------|
| Common Stock, par value \$0.0001 per share | NXTD | Nasdaq Capital Market |
| Warrants to purchase Common Stock | NXTDW | Nasdaq Capital Market |

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

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

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

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

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

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

As of May 14, 2019, there were 29,229,209 shares of common stock, par value \$0.0001 per share, of the registrant issued and outstanding.

NXT-ID, INC.
FORM 10-Q
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Nxt-ID, Inc. and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEETS

| | March 31, 2019 (Unaudited) | December 31, 2018 |
|---|----------------------------------|----------------------|
| Assets | | |
| Current Assets | | |
| Cash | \$ 1,227,803 | \$ 425,189 |
| Restricted cash | 1,473,617 | 1,189,452 |
| Accounts receivable, net | 103,316 | 247,023 |
| Inventory, net | 1,224,337 | 870,513 |
| Prepaid expenses and other current assets | 574,329 | 443,324 |
| Assets associated with discontinued operations | 209,532 | 222,227 |
| Total Current Assets | 4,812,934 | 3,397,728 |
| Property and equipment: | | |
| Equipment | 183,044 | 183,044 |
| Furniture and fixtures | 89,029 | 89,029 |
| Tooling and molds | 630,481 | 630,481 |
| | 902,554 | 902,554 |
| Accumulated depreciation | (775,537) | (757,198) |
| Property and equipment, net | 127,017 | 145,356 |
| Right-of-use assets | 233,165 | - |
| Assets associated with discontinued operations | 12,206,482 | 12,270,726 |
| Goodwill | 15,479,662 | 15,479,662 |
| Other intangible assets, net of amortization of \$2,030,320 and \$1,842,475, respectively | 6,574,247 | 6,762,092 |
| Total Assets | \$ 39,433,507 | \$ 38,055,564 |
| Liabilities, Series C Preferred Stock and Stockholders' Equity | | |
| Current Liabilities | | |
| Accounts payable | \$ 2,089,963 | \$ 1,259,129 |
| Accrued expenses | 1,763,437 | 1,701,561 |
| Short-term debt | 1,602,556 | 1,265,151 |
| Other current liabilities – contingent consideration | 884,315 | 553,126 |
| Liabilities associated with discontinued operations | 315,857 | 365,293 |
| Total Current Liabilities | 6,656,128 | 5,144,260 |
| Other long-term liabilities – contingent consideration | 2,233,826 | 2,350,592 |
| Long-term debt | 319,440 | 372,680 |
| Term loan facility, net of debt discount of \$584,916 and \$620,193, respectively, and deferred debt issuance costs of \$1,039,582 and \$1,102,280, respectively | 13,092,387 | 13,278,577 |
| Other long-term liabilities | 99,744 | - |
| Liabilities associated with discontinued operations | 31,386 | - |
| Deferred tax liability | 365,397 | 365,397 |
| Total Liabilities | 22,798,308 | 21,511,506 |
| Commitments and Contingencies | | |
| Series C Preferred Stock | | |
| Series C Preferred Stock, par value \$0.0001 per share: 2,000 shares designated; 2,000 shares issued and outstanding as of March 31, 2019 and December 31, 2018, respectively | 1,807,300 | 1,807,300 |
| Stockholders' Equity | | |
| Preferred Stock, par value \$0.0001 per share: 10,000,000 shares authorized | | |
| Series A Preferred Stock, par value \$0.0001 per share: 3,125,000 shares designated; 0 shares issued and outstanding as of March 31, 2019 and December 31, 2018, respectively | - | - |
| Series B Preferred Stock, par value \$0.0001 per share: 4,500,000 shares designated; 0 shares issued and outstanding as of March 31, 2019 and December 31, 2018, respectively | - | - |
| Common Stock, par value \$0.0001 per share: 100,000,000 shares authorized; 26,564,921 and 25,228,072 shares issued and outstanding as of March 31, 2019 and December 31, 2018, respectively | 2,656 | 2,523 |
| Additional paid-in capital | 66,138,426 | 64,748,871 |
| Accumulated deficit | (51,313,183) | (50,014,636) |
| Total Stockholders' Equity | 14,827,899 | 14,736,758 |
| Total Liabilities, Series C Preferred Stock and Stockholders' Equity | \$ 39,433,507 | \$ 38,055,564 |

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

Nxt-ID, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

| | For the Three Months Ended | |
|---|-----------------------------------|-----------------------|
| | March 31, | |
| | 2019 | 2018 |
| Revenues | \$ 4,181,710 | \$ 4,336,515 |
| Cost of goods sold | 1,019,634 | 1,207,347 |
| Gross Profit | <u>3,162,076</u> | <u>3,129,168</u> |
| Operating Expenses | | |
| General and administrative | 1,599,959 | 1,720,738 |
| Selling and marketing | 849,513 | 1,067,810 |
| Research and development | 204,953 | 146,137 |
| Total Operating Expenses | <u>2,654,425</u> | <u>2,934,685</u> |
| Operating Income | <u>507,651</u> | <u>194,483</u> |
| Other Expense | | |
| Interest expense | (586,201) | (757,478) |
| Change in fair value of contingent consideration | (214,423) | (197,709) |
| Total Other Expense | <u>(800,624)</u> | <u>(955,187)</u> |
| Loss before Income Taxes | (292,973) | (760,704) |
| Income Tax Benefit | <u>-</u> | <u>83,849</u> |
| Loss from Continuing Operations | (292,973) | (676,855) |
| Loss from Discontinued Operations | (1,005,574) | (935,958) |
| Net Loss | <u>(1,298,547)</u> | <u>(1,612,813)</u> |
| Preferred stock dividends | <u>(25,000)</u> | <u>(25,000)</u> |
| Net Loss applicable to Common Stockholders | <u>\$ (1,323,547)</u> | <u>\$ (1,637,813)</u> |
| Loss Per Share from Continuing Operations – Basic and Diluted | <u>\$ (0.01)</u> | <u>\$ (0.03)</u> |
| Loss Per Share from Discontinued Operations – Basic and diluted | <u>\$ (0.04)</u> | <u>\$ (0.04)</u> |
| Net Loss Per Share – Basic and Diluted | <u>\$ (0.05)</u> | <u>\$ (0.07)</u> |
| Weighted Average Number of Common Shares Outstanding – Basic and Diluted | <u>25,995,867</u> | <u>24,093,935</u> |

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

Nxt-ID, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE THREE MONTHS ENDED MARCH 31, 2019
(Unaudited)

| | Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total |
|---|-----------------|-------------|-------------------|-----------------|----------------------------------|------------------------|----------------------|
| | Shares | Amount | Shares | Amount | | | |
| Balance - January 1, 2019 | - | \$ - | 25,228,072 | \$ 2,523 | \$ 64,748,871 | \$ (50,014,636) | \$ 14,736,758 |
| Issuance of common stock for services | | | 212,622 | 21 | 185,229 | - | 185,250 |
| Issuance of common stock for cash, net of fees | | | 1,084,227 | 108 | 1,282,702 | - | 1,282,810 |
| Shares issued in connection with the management incentive plan for 2018 | | | 40,000 | 4 | 46,796 | - | 46,800 |
| Fees incurred in connection with equity offerings | | | - | - | (100,172) | - | (100,172) |
| Net loss | | | - | - | - | (1,298,547) | (1,298,547) |
| Preferred stock dividends | | | | | (25,000) | | (25,000) |
| Balance - March 31, 2019 | <u>-</u> | <u>\$ -</u> | <u>26,564,921</u> | <u>\$ 2,656</u> | <u>\$ 66,138,426</u> | <u>\$ (51,313,183)</u> | <u>\$ 14,827,899</u> |

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

Nxt-ID, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE THREE MONTHS ENDED MARCH 31, 2018
(Unaudited)

| | Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total |
|---|-----------------|-------------|-------------------|-----------------|----------------------------------|------------------------|----------------------|
| | Shares | Amount | Shares | Amount | | | |
| Balance - January 1, 2018 | - | \$ - | 23,583,593 | \$ 2,358 | \$ 62,052,483 | \$ (42,924,674) | \$ 19,130,167 |
| Issuance of common stock for services | | | 116,255 | 12 | 250,715 | - | 250,727 |
| Exercise of common stock purchase warrants for cash | | | 100,000 | 10 | 199,990 | - | 200,000 |
| Exercise of common stock purchase warrants on a cashless basis | | | 437,018 | 44 | (44) | - | - |
| Shares issued in connection with the management incentive plan for 2017 | | | 163,435 | 16 | 353,003 | - | 353,019 |
| Fees incurred in connection with equity offerings | | | - | - | (70,611) | - | (70,611) |
| Net loss | | | - | - | - | (1,612,813) | (1,612,813) |
| Preferred stock dividends | | | | | (25,000) | | (25,000) |
| Balance - March 31, 2018 | <u>-</u> | <u>\$ -</u> | <u>24,400,301</u> | <u>\$ 2,440</u> | <u>\$ 62,760,536</u> | <u>\$ (44,537,487)</u> | <u>\$ 18,225,489</u> |

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

Nxt-ID, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

| | For the Three Months Ended March 31, | |
|--|---|---------------------|
| | 2019 | 2018 |
| Cash Flows from Operating Activities | | |
| Net Loss | \$ (1,298,547) | \$ (1,612,813) |
| Loss from discontinued operations | (1,005,574) | (935,958) |
| Loss from continuing operations | (292,973) | (676,855) |
| Adjustments to reconcile net loss to net cash used in operating activities of continuing operations: | | |
| Depreciation | 18,339 | 31,646 |
| Stock based compensation | 229,937 | 399,794 |
| Amortization of debt discount | 35,277 | - |
| Amortization of intangible assets | 187,845 | 187,845 |
| Amortization of deferred debt issuance costs | 62,698 | 88,131 |
| Change in fair value of contingent consideration | 214,423 | 197,709 |
| Deferred taxes | - | (83,849) |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | 143,707 | (48,596) |
| Inventory | (353,824) | (28,519) |
| Prepaid expenses and other current assets | (175,692) | (254,694) |
| Accounts payable | 759,774 | 593,468 |
| Accrued expenses | (63,653) | (471,530) |
| Total Adjustments | 1,058,831 | 611,405 |
| Net Cash Provided by (Used in) Operating Activities of Continuing Operations | 765,858 | (65,450) |
| Net Cash Used in Investing Activities of Continuing Operations | - | - |
| Cash Flows from Financing Activities | | |
| Pay down of short-term debt | - | (106,481) |
| Proceeds received in connection with issuance of common stock, net | 1,282,810 | - |
| Payment of closing related fees | (15,204) | (45,243) |
| Proceeds from exercise of common stock warrants | - | 200,000 |
| Net Cash Provided by Financing Activities of Continuing Operations | 1,267,606 | 48,276 |
| Net Increase (Decrease) in Cash and Restricted Cash from Continuing Operations | 2,033,464 | (17,174) |
| Cash Flows from Discontinued Operations: | | |
| Cash used by operating activities of discontinued operations | (944,658) | (1,065,751) |
| Cash used in investing activities of discontinued operations | (2,027) | (6,866) |
| Net Cash Used by Discontinued Operations | (946,685) | (1,072,617) |
| Net Increase (Decrease) in Cash and Restricted Cash | 1,086,779 | (1,089,791) |
| Cash and Restricted Cash – Beginning of Period | 1,614,641 | 5,676,786 |
| Cash and Restricted Cash – End of Period | \$ 2,701,420 | \$ 4,586,995 |
| Supplemental Disclosures of Cash Flow Information: | | |
| Cash paid during the periods for: | | |
| Interest | \$ 480,239 | \$ 488,050 |
| Taxes | \$ - | \$ - |
| Non-cash financing activities: | | |
| Accrued fees incurred in connection with equity offerings | \$ 84,968 | \$ 25,362 |
| Accrued Series C Preferred Stock dividends | \$ 25,000 | \$ 25,000 |

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

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 1 – ORGANIZATION AND BASIS OF PRESENTATION

ORGANIZATION AND PRINCIPAL BUSINESS ACTIVITIES

Nxt-ID, Inc. (“Nxt-ID” or the “Company”) was incorporated in the State of Delaware on February 8, 2012. As of December 31, 2018, the Company is no longer an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). The Company is a security technology company and operates its business in one segment – hardware and software security systems and applications. The Company is engaged in the development of proprietary products and solutions that serve multiple end markets, including the security, healthcare, financial technology and the Internet of Things (“IoT”) markets. The Company evaluates the performance of its business on, among other things, profit and loss from operations. With extensive experience in access control, biometric and behavior-metric identity verification, security and privacy, encryption and data protection, payments, miniaturization, and sensor technologies, the Company develops and markets solutions for payment, IoT and healthcare applications.

The Company’s wholly-owned subsidiary, LogicMark LLC (“LogicMark”), manufactures and distributes non-monitored and monitored personal emergency response systems sold through the United States Department of Veterans Affairs, healthcare durable medical equipment dealers and distributors and monitored security dealers and distributors. The Company’s wholly-owned subsidiary, Fit Pay, Inc. (“Fit Pay”), has a proprietary technology platform that delivers payment, credential management, authentication and other secure services to the IoT ecosystem. The platform uses tokenization, a payment security technology that replaces cardholders’ account information with a unique digital identifier, to transact highly secure contactless payment and authentication services.

On September 21, 2018, the Company announced that its board of directors approved a plan to separate the Company’s financial technology business from its healthcare business into an independent publicly traded company. The Company will distribute shares of PartX, Inc., a newly created company and wholly-owned subsidiary of the Company (“PartX”), to the Company’s stockholders through the execution of a spin-off. As a result, the Company reclassified its financial technology business to discontinued operations for all periods reported. The Company’s financial technology business is comprised of its Fit Pay subsidiary and the intellectual property developed by the Company, including the Flye Smartcard and the Wocket. On April 29, 2019, a Registration Statement on Form 10 was filed by PartX with the Securities and Exchange Commission (“SEC”) in connection with the planned spin-off of the Company’s payments, authentication and credential management business. See Note 4.

BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements as of March 31, 2019, and for the three months ended March 31, 2019 and 2018 have been prepared in accordance with the accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and pursuant to the instructions to Form 10-Q and Article 8 of Regulation S-X of the SEC and on the same basis as the Company prepares its annual audited consolidated financial statements. The unaudited condensed consolidated balance sheet as of March 31, 2019 and the condensed consolidated statements of operations, changes in equity and cash flows for the three months ended March 31, 2019 and March 31, 2018 are unaudited, but include all adjustments, consisting only of normal recurring adjustments, which the Company considers necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented. The results for the three months ended March 31, 2019 are not necessarily indicative of results to be expected for the year ending December 31, 2019, or for any future interim period. The condensed consolidated balance sheet at December 31, 2018 has been derived from audited consolidated financial statements. However, it does not include all of the information and notes required by U.S. GAAP for complete consolidated financial statements. The accompanying condensed consolidated financial statements should be read in conjunction with the consolidated financial statements for the year ended December 31, 2018 and the notes thereto included in the Company’s Annual Report on Form 10-K, which was filed with the SEC on April 1, 2019.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 2 – LIQUIDITY AND MANAGEMENT PLANS

The Company generated operating income from continuing operations of \$507,651 and incurred a net loss from continuing operations of \$292,973 during the three months ended March 31, 2019. Certain of these factors raise substantial doubt about the Company's ability to sustain operations for at least one year from the issuance of these financial statements. However, given the Company's cash position at March 31, 2019, anticipated future cash proceeds from the sale of common stock from the January 2019 At-the-Market Offering and its projected cash flow from operations, the Company believes that it will have sufficient capital to sustain operations over the next twelve months following the date of this filing to alleviate such substantial doubt. As of March 31, 2019, the Company (excluding discontinued operations) had a working capital deficiency of \$1,736,869 and stockholders' equity of \$14,827,899. In order to execute the Company's long-term strategic plan to develop and commercialize its core products, fulfill its product development commitments and fund its obligations as they come due, the Company may need to raise additional funds, through public or private equity offerings, debt financings, or other means. Should the Company not be successful in obtaining the necessary financing, or generate sufficient revenue to fund its operations, the Company would need to engage in certain cost containment efforts, and/or curtail certain of its operational activities.

During the three months ended March 31, 2019, the Company received net proceeds of \$1,282,810 from the sale of common stock in connection with the January 2019 At-the-Market Offering (See Note 6). However, the Company can give no assurance that any cash raised subsequent to March 31, 2019 will be sufficient to execute its business plan or meet its obligations. The Company can give no assurance that additional funds will be available on reasonable terms, or available at all, or that it will generate sufficient revenue to alleviate these conditions.

The Company's ability to execute its business plan is dependent upon its ability to raise additional equity, secure debt financing, and/or generate revenue. Should the Company not be successful in obtaining the necessary financing, or generate sufficient revenue to fund its operations, the Company would need to curtail certain of its operational activities.

NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

USE OF ESTIMATES IN THE FINANCIAL STATEMENTS

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company's management evaluates these significant estimates and assumptions including those related to the fair value of acquired assets and liabilities, stock based compensation, derivative instruments, income taxes, accounts receivable and inventories, right-of-use assets and other matters that affect the condensed consolidated financial statements and disclosures. Actual results could differ from those estimates.

PRINCIPLES OF CONSOLIDATION

The condensed consolidated financial statements include the accounts of Nxt-ID and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated in consolidation.

REVENUE RECOGNITION

The Company's revenues consist of product sales to either end customers or to distributors and its sales are recognized at a point-in-time under the core principle of recognizing revenue when control of the product transfers to the customer. The Company recognizes revenue when it ships or delivers the product from its fulfillment center to its customer, when the customer accepts and has legal title of the product, and the Company has a present right to payment for the product. For the three months ended March 31, 2019 and 2018, the Company had no sales recognized over time. The Company invoices its customers at the same time that the Company's performance obligation is satisfied. The Company generally receives customer orders with a specified delivery date and orders typically fluctuate from month-to-month based on customer demand and general business conditions.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

The Company offers standard product warranty coverage which provides assurance that the Company's products will conform to the contractually agreed-upon specifications for a limited period from the date of shipment. The Company's warranty liabilities and related expense have not been material and were not material in the accompanying condensed consolidated financial statements as of March 31, 2019 and December 31, 2018, and for the three months ended March 31, 2019 and 2018.

ACCOUNTS RECEIVABLE

Accounts receivable is stated at net realizable value. The Company regularly reviews accounts receivable balances and adjusts the receivable reserves as necessary whenever events or circumstances indicate the carrying value may not be recoverable. At March 31, 2019 and December 31, 2018, the Company had an allowance for doubtful accounts of \$126,733.

INVENTORY

The Company performs regular reviews of inventory quantities on hand and evaluates the realizable value of its inventories. The Company adjusts the carrying value of the inventory as necessary with estimated valuation reserves for excess, obsolete, and slow-moving inventory by comparing the individual inventory parts to forecasted product demand or production requirements. As of March 31, 2019, inventory was comprised of \$142,567 in raw materials and \$1,081,770 in finished goods on hand. Inventory at December 31, 2018 was comprised of \$870,513 in finished goods on hand. The Company is required to prepay for certain inventory with certain vendors until credit terms can be established. As of March 31, 2019 and December 31, 2018, the Company had prepaid inventory of \$271,242 and \$317,488, respectively. These prepayments were made primarily for finished goods inventory, and prepaid inventory is included in prepaid expenses and other current assets on the condensed consolidated balance sheets.

OTHER INTANGIBLE ASSETS

At March 31, 2019, the other intangible assets relating to the acquisition of LogicMark are comprised of patents of \$3,099,254; trademarks of \$1,088,742; and customer relationships of \$2,386,251. At December 31, 2018, the other intangible assets relating to the acquisition of LogicMark are comprised of patents of \$3,191,159; trademarks of \$1,104,246; and customer relationships of \$2,466,687. The Company will continue amortizing these intangible assets using the straight-line method over their estimated useful lives which for the patents, trademarks and customer relationships are 11 years; 20 years; and 10 years, respectively. During the three months ended March 31, 2019 and 2018, the Company had amortization expense of \$187,845 and \$187,845, respectively, related to the LogicMark intangible assets.

As of March 31, 2019, total amortization expense estimated for the remainder of fiscal year 2019 is approximately \$574,000, and for each of the next five fiscal years, 2020 through 2024, the total amortization expense is estimated to be as follows: 2020 - \$762,000; 2021 - \$762,000; 2022 - \$762,000; 2023 - \$762,000; and 2024 - \$762,000.

STOCK-BASED COMPENSATION

The Company accounts for share-based awards exchanged for employee services at the estimated grant date fair value of the award. The Company accounts for equity instruments issued to non-employees at their fair value on the measurement date. The measurement of stock-based compensation is subject to periodic adjustment as the underlying equity instrument vests or becomes non-forfeitable. Non-employee stock-based compensation charges are amortized over the vesting period or as earned. Stock-based compensation is recorded in the same component of operating expenses as if it were paid in cash. The Company generally issues new shares of common stock to satisfy conversion and warrant exercises.

NET LOSS PER SHARE

Basic loss per share was computed using the weighted average number of shares of common stock outstanding. Diluted loss per share includes the effect of diluted common stock equivalents. Potentially dilutive securities from the exercise of warrants to purchase 4,782,448 shares of common stock as of March 31, 2019 were excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive. As of March 31, 2018, potentially dilutive securities from the exercise of warrants to purchase 4,602,650 shares of common stock were excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

RECLASSIFICATIONS

Certain accounts in the prior period consolidated financial statements have been reclassified for comparison purposes to conform to the presentation of the current period consolidated financial statements. These reclassifications had no effect on the previously reported net loss.

RECENT ACCOUNTING PRONOUNCEMENTS

In August 2018, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") ASU 2018-13, which eliminates, adds and modifies certain disclosure requirements for fair value measurements as part of the FASB's disclosure framework project. Adoption of this guidance is required for fiscal years and interim periods within those fiscal years, beginning after December 15, 2019. The Company is currently evaluating this guidance and the impact of this update on its condensed consolidated financial statements.

In July 2017, the FASB issued ASU 2017-11, "I. Accounting for Certain Financial Instruments with Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception". Part I of this update addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. Part II of this update addresses the difficulty of navigating Topic 480, "Distinguishing Liabilities from Equity," because of the existence of extensive pending content in the FASB Accounting Standards Codification. This pending content is the result of the indefinite deferral of accounting requirements about mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable noncontrolling interests. The amendments in Part II of this update do not have an accounting effect. This ASU is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. This ASU was adopted and did not have a material impact on the Company's condensed consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)", which amended, among other things, the existing guidance by requiring lessees to recognize lease right-of-use assets ("ROU assets") and liabilities arising from operating leases on the balance sheet. Since issuing Topic 842, the FASB has issued various subsequent ASUs, including but not limited to ASU 2018-10, "Codification Improvements to Topic 842, Leases," which clarified various aspects of the guidance under Topic 842, as well as ASU 2018-11, "Leases (Topic 842): Targeted Improvements," which allows entities the option of recognizing the cumulative effect of applying Topic 842 as an adjustment to the opening balance of retained earnings in the year of adoption while continuing to present all prior periods under previous lease accounting guidance.

Prior to the adoption, the Company evaluated Topic 842, including the initial review of any necessary changes to existing processes and systems that would be required to implement this standard, in order to determine its impact on the Company's consolidated financial statements and related disclosures.

The Company adopted Topic 842 on January 1, 2019 using the updated modified retrospective transition approach allowed under ASU 2018-11 and did not restate prior periods. The Company recognized ROU assets and related lease liabilities on its condensed consolidated balance sheet as of January 1, 2019 of approximately \$267,516 and \$269,820, respectively, related to its operating lease commitments, and there was no cumulative impact on retained earnings as of January 1, 2019. Topic 842 did not have a material impact on the Company's condensed consolidated statements of income and condensed consolidated statements of cash flow for the three months ended March 31, 2019, nor did it have any impact on the Company's compliance with debt covenants. The adoption of Topic 842 provided various optional practical expedients in transition, some of which the Company elected. Going forward, the impact of Topic 842 on the Company's consolidated financial statements will be dependent upon the Company's lease portfolio. The accounting for finance leases (formerly referred to as "capital leases") remains substantially unchanged. See Note 7 herein for further details regarding the impact of the adoption of Topic 842 and other information related to the Company's lease portfolio.

Other recent accounting standards that have been issued or proposed by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the Company's consolidated financial statements upon adoption.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 4 – DISCONTINUED OPERATIONS

The following table presents the assets and liabilities related to the financial technology product line classified as assets and liabilities associated with discontinued operations (See Note 1) in the condensed consolidated balance sheets as of March 31, 2019 and December 31, 2018:

| | March 31, 2019 | December 31, 2018 |
|--|---------------------------|------------------------------|
| Accounts receivable, net | \$ 127,135 | \$ 125,318 |
| Prepaid expenses and other assets | 82,397 | 96,909 |
| Total current assets associated with discontinued operations | <u>\$ 209,532</u> | <u>\$ 222,227</u> |
| Property and equipment, net | 36,629 | 38,793 |
| Right-of-use assets | 91,655 | - |
| Goodwill | 9,119,709 | 9,119,709 |
| Other intangible assets | 2,958,489 | 3,112,224 |
| Total non-current assets associated with discontinued operations | <u>\$ 12,206,482</u> | <u>\$ 12,270,726</u> |
| Accounts payable | \$ 132,604 | \$ 175,982 |
| Accrued expenses | 180,753 | 185,978 |
| Customer deposits | 2,500 | 3,333 |
| Total liabilities associated with discontinued operations | <u>\$ 315,857</u> | <u>\$ 365,293</u> |

The following table represents the financial results of the discontinued operations for the three months ended March 31, 2019 and 2018:

| | For the Three Months Ended March 31, | |
|-----------------------------------|---|---------------------|
| | 2019 | 2018 |
| Net sales | \$ 221,476 | \$ 594,093 |
| Cost of sales | 62,981 | 262,132 |
| Gross profit | 158,495 | 331,961 |
| Operating expenses | 1,162,358 | 1,267,192 |
| Interest expense | 1,711 | 727 |
| Loss from discontinued operations | <u>\$ (1,005,574)</u> | <u>\$ (935,958)</u> |

(1) The contingent liability associated with the earn-out payment due to certain of the Fit Pay legacy shareholders is not included in discontinued operations.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 5 – DEBT REFINANCING

On May 24, 2018, LogicMark, a wholly owned subsidiary of Nxt-ID, entered into a Senior Secured Credit Agreement (the “Credit Agreement”) with the lenders thereto and Sagard Holdings Manager LP, as administrative agent and collateral agent for the lenders party to the Credit Agreement (collectively, the “Lender”), whereby the Lender extended a term loan (the “Term Loan”) to LogicMark in the principal amount of \$16,000,000. The maturity date of the Term Loan is May 24, 2023. The outstanding principal amount of the Term Loan bears interest at a rate of LIBOR, adjusted monthly, plus 9.5% per annum (approximately 11.99% as of March 31, 2019). The Company incurred \$1,253,970 in deferred debt issue costs related to the Term Loan. During the three months ended March 31, 2019, the Company amortized \$62,698 of the deferred debt issue costs which is included in interest expense in the condensed consolidated statement of operations. At March 31, 2019 the unamortized balance of deferred debt issue costs was \$1,039,582. Pursuant to the terms and conditions of the Credit Agreement, LogicMark is required to deposit 50% of its excess cash flow generated into a restricted bank account for a maximum period of one (1) year. Excess cash flow is defined as LogicMark’s adjusted earnings before interest, taxes, depreciation and amortization less any debt service, debt prepayments and capital expenditures. At the end of the one (1) year period, the restricted cash may be used either to pay down the Term Loan or LogicMark will have the ability to transfer the restricted cash balance to an operating bank account and use the cash for operational purposes. This determination will be made solely at the discretion of the Lender. On December 10, 2018, LogicMark entered into a Consent to the Credit Agreement (the “Consent”) with Sagard Holdings Manager LP whereby LogicMark temporarily withdrew \$500,000 from the restricted cash balance. In accordance with the Consent, the repayment of the temporary withdrawal was to be made no later than January 31, 2019. On April 1, 2019, the Company entered into an amendment to the Consent where by the repayment date of the temporary withdrawal was extended to no later than April 5, 2019. As a result of the Consent and the amended Consent, the Company had an accrued usage fee of \$125,000 due to the Lender as of March 31, 2019. The usage fee is included in accrued liabilities on the Company’s condensed consolidated balance sheet at March 31, 2019. The Company’s restricted cash balance at March 31, 2019 included \$1,283,115 related to LogicMark’s excess cash flow generated.

The Credit Agreement contains customary financial covenants. As of March 31, 2019, the Company was in compliance with such covenants.

The performance of LogicMark under the Credit Agreement is secured by: (a) a senior lien granted pursuant to a Security Agreement on all of the assets of LogicMark, the Company, 3D-ID, LLC (one of the Company’s wholly-owned subsidiaries) and Fit Pay (one of the Company’s wholly-owned subsidiaries); (b) a senior lien granted pursuant to an Intellectual Property Security Agreement on all of the intellectual property assets of the foregoing companies; and (c) a pledge of certain pledged securities of the foregoing companies pursuant to a Securities Pledge Agreement. The performance of LogicMark is guaranteed pursuant to a Guaranty Agreement by the Company, 3D-ID, LLC and Fit Pay.

In addition to entering into the Credit Agreement, the Company issued two (2) common stock purchase warrants (each, a “Sagard Warrant”) to Sagard Credit Partners, LP. Each Sagard Warrant is exercisable for 244,081 shares of the Company’s common stock (collectively, the “Sagard Warrant Shares”). Each Sagard Warrant will be exercisable beginning on May 24, 2018, for a period of five (5) years. The exercise price per share is \$3.90 for the first Sagard Warrant and \$4.88 for the second Sagard Warrant. The exercise price and the amount of shares of the Company’s common stock issuable upon exercise of each Sagard Warrant are subject to adjustment upon certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate changes or dilutive issuances.

On May 24, 2018 the Company recorded a debt discount of \$705,541. The debt discount is attributable to the aggregate fair value on the issuance date of both Sagard Warrants. The debt discount is being amortized using the effective interest method over the five-year term of the Term Loan. During the three months ended March 31, 2019, the Company recorded \$35,277 of debt discount amortization related to the Sagard Warrants. The debt discount amortization is included as part of interest expense in the condensed consolidated statement of operations.

Each Sagard Warrant contains a covenant of the Company that within ninety (90) days of May 24, 2018, at the Company’s sole cost and expense, it will file or cause to be filed a registration statement covering the resale of the Sagard Warrant Shares, and will promptly provide confirmation of such registration to the holder. The registration statement covering the resale of the Sagard Warrant Shares was filed and became effective in July 2018. To the extent a legal opinion is required in connection therewith, such opinion shall be obtained by the Company at the Company’s expense. In no event shall the Company be responsible for any broker or similar commissions of any holder or any legal fees or other costs of the holder of the Sagard Warrants.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 6 – STOCKHOLDERS' EQUITY

January 2019 At-the-Market Offering

On January 8, 2019, the Company entered into a sales agreement with A.G.P./Alliance Global Partners (“A.G.P.”) for an at-the-market offering, pursuant to which the Company may sell, at its option, shares of its common stock, par value \$0.0001 per share, having an aggregate offering price of up to \$15 million to or through A.G.P., as sales agent. The Company will pay A.G.P. commissions for its services in acting as the Company’s sales agent in the sale of its common stock pursuant to the sales agreement. A.G.P. will be entitled to compensation at a fixed commission rate of 3.0% of the gross proceeds from the sale of the Company’s common stock on the Company’s behalf pursuant to the sales agreement. The Company also has agreed to reimburse A.G.P. for its reasonable out-of-pocket expenses, including the fees and disbursements of counsel to A.G.P., incurred in connection with the offering, in an amount not to exceed \$35,000. During the three months ended March 31, 2019, the Company received \$1,282,810 in net proceeds from the sale of 1,084,227 shares of its common stock under the sales agreement with A.G.P.

2013 Long-Term Stock Incentive Plan

On January 4, 2013, a majority of the Company’s stockholders approved by written consent the Company’s 2013 Long-Term Stock Incentive Plan (“LTIP”). The maximum aggregate number of shares of common stock that may be issued under the LTIP, including stock awards, stock issued to directors for serving on the Company’s board of directors, and stock appreciation rights, is limited to 10% of the shares of common stock outstanding on the first business or trading day of any fiscal year, which is 975,886 shares of common stock at January 1, 2019.

During the three months ended March 31, 2019, the Company issued an aggregate of 112,485 shares of common stock under the LTIP to five (5) non-employee directors for serving on the Company’s board. The aggregate fair value of the shares issued to the directors was \$100,000.

2017 Stock Incentive Plan

On August 24, 2017, a majority of the Company’s stockholders approved at the 2017 Annual Stockholders’ Meeting the 2017 Stock Incentive Plan (“2017 SIP”). The aggregate maximum number of shares of common stock (including shares underlying options) that may be issued under the 2017 SIP pursuant to awards of restricted shares or options will be limited to 10% of the outstanding shares of common stock, which calculation shall be made on the first (1st) business day of each new fiscal year; provided that for fiscal year 2017, 1,500,000 shares of common stock may be delivered to participants under the 2017 SIP. Thereafter, the 10% provision shall govern the 2017 SIP. The number of shares of common stock that are the subject of awards under the 2017 SIP which are forfeited or terminated, are settled in cash in lieu of shares of common stock or are settled in a manner such that all or some of such shares covered by an award are not issued to a participant or are exchanged for awards that do not involve shares of common stock will again immediately become available to be issued pursuant to awards granted under the 2017 SIP. If shares of common stock are withheld from payment of an award to satisfy tax obligations with respect to the award, those shares of common stock will be treated as shares that have been issued under the 2017 SIP and will not again be available for issuance under the 2017 SIP.

In addition, during the three months ended March 31, 2019, the Company issued 40,000 shares of common stock with an aggregate fair value of \$46,800 to certain non-executive employees related to the Company’s 2018 management incentive plan.

During the three months ended March 31, 2019, the Company accrued \$110,000 of management and employee bonus expense.

During the three months ended March 31, 2019, the Company issued 100,137 shares of common stock with a fair value of \$85,250 to non-employees for services rendered.

Warrants

As of March 31, 2019, the Company had outstanding warrants to purchase an aggregate of 4,782,448 shares of common stock with a weighted average exercise price and remaining life of \$5.32 and 3.29 years, respectively. At March 31, 2019, the warrants had no aggregate intrinsic value. During the three months ended March 31, 2019, warrants to purchase an aggregate of 307,904 shares of common stock with a weighted-average exercise price of \$7.08 expired.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 7 – COMMITMENTS AND CONTINGENCIES

LEGAL MATTERS

From time to time, the Company may be involved in various claims and legal actions arising in the ordinary course of our business. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the executive officers of the Company or any of our subsidiaries, threatened against or affecting our company, or any of our subsidiaries in which an adverse decision could have a material adverse effect upon our business, operating results, or financial condition.

COMMITMENTS

The Company leases office space and a fulfillment center in the U.S., which are classified as operating leases expiring at various dates. The Company determines if an arrangement qualifies as a lease at the lease inception. The Company adopted Topic 842 effective January 1, 2019. Operating lease liabilities are recorded based on the present value of the future lease payments over the lease term, assessed as of the commencement date. The Company's real estate leases, which are for office space and a fulfillment center, generally have a lease term between 3 and 5 years. The Company also leases a copier with a lease term of 5 years. The Company's leases are comprised of fixed lease payments and also include executory costs such as common area maintenance, as well as property insurance and property taxes. As a practical expedient under Topic 842, the Company has elected to account for the lease and non-lease components as a single lease component for its real estate leases. Lease payments, which may include lease components, non-lease components and non-components, are included in the measurement of the Company's lease liabilities to the extent that such payments are either fixed amounts or variable amounts based on a rate or index (fixed in substance) as stipulated in the lease contract. Any actual costs in excess of such amounts are expensed as incurred as variable lease cost.

The Company's lease agreements generally do not specify an implicit borrowing rate, and as such, the Company utilizes its incremental borrowing rate by lease term, in order to calculate the present value of the future lease payments. The discount rate represents a risk-adjusted rate on a secured basis, and is the rate at which the Company would borrow funds to satisfy the scheduled lease liability payment streams commensurate with the lease term. On January 1, 2019, the discount rate used on existing leases at adoption was determined based on the remaining lease term using available data as of that date. The Company did not have new or renewed leases commencing in 2019.

Certain of the Company's lease agreements, primarily related to real estate, include options for the Company to either renew (extend) or early terminate the lease. Leases with renewal options allow the Company to extend the lease term typically between 1 and 3 years. Renewal options are reviewed at lease commencement to determine if such options are reasonably certain of being exercised, which could impact the lease term. When determining if a renewal option is reasonably certain of being exercised, the Company considers several factors, including but not limited to, significance of leasehold improvements incurred on the property, whether the asset is difficult to replace, or specific characteristics unique to the particular lease that would make it reasonably certain that the Company would exercise such option. In most cases, the Company has concluded that renewal and early termination options are not reasonably certain of being exercised by the Company (and thus not included in the Company's ROU asset and lease liability) unless there is an economic, financial or business reason to do so.

For the three months ended March 31, 2019, total operating lease cost was \$41,938 and is recorded in cost of sales and selling, general and administrative expenses, dependent on the nature of the leased asset. The operating lease cost is recognized on a straight-line basis over the lease term. The following summarizes (i) the future minimum undiscounted lease payments under non-cancelable lease for the remainder of 2019 as well as each of the next five years and thereafter, incorporating the practical expedient to account for lease and non-lease components as a single lease component for our existing real estate leases, (ii) a reconciliation of the undiscounted lease payments to the present value of the lease liabilities recognized, and (iii) the lease-related account balances on the Company's condensed consolidated balance sheet, as of March 31, 2019:

Year Ending December 31,

| | | |
|--|----|----------|
| 2019 (excluding the three months ended March 31, 2019) | \$ | 126,487 |
| 2020 | | 88,827 |
| 2021 | | 23,279 |
| 2022 | | 18,185 |
| 2023 | | 12,123 |
| Total future minimum lease payments | \$ | 268,901 |
| Less imputed interest | | (33,181) |
| Total present value of future minimum lease payments | \$ | 235,720 |

As of March 31, 2019

| | |
|-------------------------------------|-------------------|
| Operating lease right-of-use assets | \$ 233,165 |
| Other accrued expenses | \$ 135,976 |
| Other long-term liabilities | \$ 99,744 |
| | <u>\$ 235,720</u> |

As of March 31, 2019

| | |
|---------------------------------------|-----------|
| Weighted Average Remaining Lease Term | 1.6 years |
| Weighted Average Discount Rate | 11.74% |

Prior to January 1, 2019, the Company accounted for its leases in accordance with Topic 840, "Leases." At December 31, 2018, the Company was committed under operating leases for office space and a fulfillment center, which expired at various dates. As previously disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2018 and under previous lease accounting guidance, future minimum lease payments under non-cancelable operating leases as of December 31, 2018 totaled \$173,062, comprised of \$97,597 for 2019, \$70,309 for 2020, and \$5,156 for 2021.

Debt Maturity

The maturity of the Company's debt is as follows:

| | |
|------------------|----------------------|
| 2019 (remainder) | \$ 1,602,556 |
| 2020 | 212,961 |
| 2021 | 106,479 |
| 2022 | - |
| 2023 | 14,716,885 |
| Total debt | <u>\$ 16,638,881</u> |

NOTE 8 – SUBSEQUENT EVENTS

The Company evaluates events that have occurred after the balance sheet date but before the financial statements are issued.

On April 1, 2019, the Company issued 8,436 shares of its common stock for the payment of services with a grant date fair value of \$7,500.

On April 2, 2019, the Company entered into a securities purchase agreement with an investor in connection with the registered direct public offering of 2,469,136 shares of the Company's common stock, for a purchase price of approximately \$2,000,000. The shares of common stock were offered at a price of \$0.81 per share. In connection with the offering, the Company also issued to the investor for no additional consideration a common stock purchase warrant to purchase 2,469,136 shares of common stock. The warrant was exercisable immediately upon issuance at an exercise price of \$1.05 per share and will expire on the fifth (5th) anniversary of the initial exercise date.

On April 25, 2019, the Company issued 105,833 shares of its common stock to certain employees under the 2017 management incentive plan.

On April 25, 2019, the Company issued 80,883 shares of its common stock to certain employees under the 2018 management incentive plan.

On May 3, 2019, LogicMark, a wholly-owned subsidiary of the Company, completed the closing of a \$16.5 million senior secured term loan. The Company will use the proceeds from the term loan to refinance LogicMark's existing term loan facility with Sagard Holdings Manager LP and to pay other costs related to the refinancing. The key aspects of the new term loan facility include an interest rate of LIBOR plus 11.00%, a three-year maturity date from the closing date and minimum principal payments over the three-year term amortized over 96 months. This refinancing also removes a covenant included in LogicMark's existing term loan facility with Sagard Holdings Manager LP and allows the Company to proceed with the proposed spin-off of its Fit Pay subsidiary and its payments, authentication and credential management business.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations for the three months ended March 31, 2019 should be read together with our condensed consolidated financial statements and related notes included elsewhere in this quarterly report. This discussion contains forward-looking statements and information relating to our business that reflect our current views and assumptions with respect to future events and are subject to risks and uncertainties that may cause our or our industry’s actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These forward-looking statements speak only as of the date of this report. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, or achievements. Except as required by applicable law, including the securities laws of the United States, we expressly disclaim any obligation or undertaking to disseminate any update or revisions of any of the forward-looking statements to reflect any change in our expectations with regard thereto or to conform these statements to actual results.

Overview

We were incorporated in the State of Delaware on February 8, 2012. As of December 31, 2018, we are no longer an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). We are a security technology company and we operate our business in one segment – hardware and software security systems and applications. We are engaged in the development of proprietary products and solutions that serve multiple end markets, including the security, healthcare, financial technology and the Internet of Things (“IoT”) markets. We evaluate the performance of our business on, among other things, profit and loss from operations. With extensive experience in access control, biometric and behavior-metric identity verification, security and privacy, encryption and data protection, payments, miniaturization, and sensor technologies, we develop and market solutions for payment, IoT and healthcare applications.

Our wholly-owned subsidiary, LogicMark, manufactures and distributes non-monitored and monitored personal emergency response systems sold through the United States Department of Veterans Affairs (the “VA”), healthcare durable medical equipment dealers and distributors and monitored security dealers and distributors. Our wholly-owned subsidiary, Fit Pay, has a proprietary technology platform that delivers payment, credential management, authentication and other secure services to the IoT ecosystem. The platform uses tokenization, a payment security technology that replaces cardholders’ account information with a unique digital identifier, to transact highly secure contactless payment and authentication services.

On September 21, 2018, we announced that our board of directors approved a plan to separate our financial technology business from our healthcare business into an independent publicly traded company. We will distribute shares of PartX, Inc., a newly created company and wholly-owned subsidiary of the Company (“PartX”), to our stockholders through the execution of a spin-off. As a result, we reclassified our financial technology business to discontinued operations for all periods reported (See Note 4). Our financial technology business is comprised of our Fit Pay subsidiary and the intellectual property developed by the Company, including the Flye Smartcard and the Wocket. On April 29, 2019, a Registration Statement on Form 10 was filed by PartX with the SEC in connection with the planned spin-off of our payments, authentication and credential management business.

Healthcare

With respect to the healthcare market, our business initiatives are driven by LogicMark, which serves a market that enables two-way communication, medical device connectivity and patient data tracking of key vitals through sensors, biometrics, and security to make home health care a reality. There are three (3) major trends driving this market: (1) an increased desire for connectivity; specifically, a greater desire for connected devices by people over 60 years of age who now represent the fastest growing demographic for social media; (2) the growth of “TeleHealth”, which is the means by which telecommunications technologies are meeting the increased need for health systems to better distribute doctor care across a wider range of health facilities, making it easier to treat and diagnose patients; and (3) rising healthcare costs – as health spending continues to outpace the economy, representing between 6% and 7% of the overall economy, the need to reduce hospital readmissions, increase staffing efficiency and improve patient engagement remain the highest priorities. Together, these trends have produced a large and growing market for us to serve. LogicMark has built a successful business on emergency communications in healthcare. We have a strong business relationship with the VA today, serving veterans who suffer from chronic conditions that often require emergency assistance. This business is steady and growing, producing the highest annual revenue in its operational history in 2018. Our strategic plan calls for expanding LogicMark’s business into other healthcare verticals as well as retail and enterprise channels in order to better serve the expanding demand for connected and remote healthcare solutions.

Home healthcare, which includes health monitoring and management using IoT and cloud-based processing, is an emerging area for LogicMark. The long-term trend toward more home-based healthcare is a massive shift that is being driven by demographics (an aging population) and basic economics. People also value autonomy and privacy which are important factors in determining which solutions will suit the market. Consumers are beginning to enjoy the benefits of smart home technologies and online digital assistants. We believe one of the promising applications of our VoiceMatch™ technology is enabling secure commands for restricted medical access. This solution, when coupled with Nxt-ID BioCloud™, combines biometrics with encryption and distributed access control.

PERS devices are used to call for help and medical care during an emergency. These devices are also used by a wide patient pool, as well as the general population, to ensure safety and security when living or traveling alone. The global medical alert systems market caters to different end-users across the healthcare industry, including individual users, hospitals and clinics, assisted living facilities and senior living facilities. The growing demand for home healthcare devices is mainly driven by an aging population and rising healthcare costs worldwide. We believe that this will spur the usage of medical alert systems across the globe, as they offer safety and medical security while being affordable and accessible.

Payments and Financial Technology

We conduct our payments business through Fit Pay, a wholly owned subsidiary of Nxt-ID, which was acquired in May 2017. Fit Pay's core technology is a proprietary platform that enables contactless payment capabilities, allowing its customers, which include manufacturers of "smart devices," to add payment capabilities to their products. Fit Pay connects its customers to leading payment card networks, including Visa, Mastercard, Maestro and Discover, and to credit card issuing banks, globally. It successfully commercialized its third-party token service provider platform with the launch of the Garmin Pay™, which is powered by Fit Pay's platform. Fit Pay's technology and tokenization service enables the contactless payment feature that is included in smartwatches manufactured by Garmin International, Inc. ("Garmin"). The payment feature, which went live in the fall of 2017, is now included in 11 of Garmin's smartwatches. In January 2019, Fit Pay extended its contactless payment functionality to another major brand, announcing that its Token Requester Management Platform ("TRM Platform") is also enabling SwatchPAY! on four (4) new watches announced by Swatch AG.

In addition, the geographic and issuer footprint for Garmin Pay™ is expanding and now is a network of more than 280 issuing banks in 34 countries with additions being made regularly. This represents a significant increase from year-end 2017, at which time the network included 60 issuing banks in 8 countries. As a part of this growth, Fit Pay announced recent agreements with Chase, Westpac, Discover and Mastercard's Maestro network in Europe. This expansion of the Garmin Pay™ network increases the overall revenue opportunity of this flagship customer and establishes banking and network relationships that may be leveraged for future payment solution offerings.

Fit Pay's TRM Platform offers an opportunity for a whole new range of devices to become payment-enabled, without the manufacturer of such devices having to invest in and develop such capabilities. Fit Pay is continuously developing new products to leverage its TRM Platform and expanding its network of payment card issuers and issuing banks. Fit Pay also develops proprietary payment devices that it expects to offer through business-to-business and direct-to-consumer channels. These new products will leverage the TRM Platform and expand Fit Pay's reach to new customers and emerging markets, such as cryptocurrency and other connected devices and products, generally referred to as the Internet of Things ("IoT").

Fit Pay's initial consumer product offering is a platform extension and contactless payment device called Flip™, which enables Bitcoin holders to make contactless payment transactions at millions of retail locations with value exchanged from their cryptocurrency. Fit Pay believes the product represents an opportunity to bring to market a unique offering in an emerging market segment.

It was also announced in October 2018 that Fit Pay is a technology partner for Visa's Token Service for credential-on-file ("COF") token requestors. Through this program, Fit Pay will be able to tokenize COF digital payments on behalf of merchant and payment ecosystem clients, greatly expanding the addressable market for its platform services. Fit Pay leverages the EMVCo Payment Tokenization Standard to "tokenize" or replace sensitive personal information, such as payment card numbers and expiration dates, with a unique digital identifier or "token." Tokenizing COF records offers increased security for consumers and merchants by never exposing personal information and therefore potentially lowering fraud related expenses to payment card networks and issuing banks.

In addition to enhancing security, Fit Pay's technology will allow financial institutions to seamlessly update expired or compromised payment credentials at one point of reference, thereby eliminating a significant point of friction for consumers and merchants. Fit Pay believes these additional services will be buoyed by the overall growth in digital payments.

Together, Fit Pay believes these opportunities position its emerging payment and financial technology business for growth as it monetizes its core TRM Platform technology and expands its products and services to new markets and customers.

As an early and established entrant into the contactless and digital payments market, Fit Pay believes that it is well-positioned to take advantage of both the growth of payment-enabled devices and the consumer demand for new methods of payments.

Results of Operations

Comparison of three months ended March 31, 2019 and March 31, 2018

Revenue. Our revenues from continuing operations for the three months ended March 31, 2019 were \$4,181,710, compared to \$4,336,515 for the three months ended March 31, 2018. The decrease in our revenues for the three months ended March 31, 2019 as compared to the three months ended March 31, 2018 is primarily attributable to LogicMark's decreased sales volume in commercial sales offset in part by a favorable shift in product sales mix from land-based products to mobile products which typically have a higher sales price on a per unit basis.

Cost of Revenue and Gross Profit. Our gross profit from continuing operations for the three months ended March 31, 2019 was \$3,162,076 compared to a gross profit of \$3,129,168 for the three months ended March 31, 2018. The increase in gross profit in the three months ended March 31, 2019 as compared to the three months ended March 31, 2018 is primarily attributable to the higher gross profit resulting from the favorable shift in product sales mix discussed above which was partially offset by the decreased volume in LogicMark's commercial product sales.

Operating Expenses. Operating expenses for the three months ended March 31, 2019 totaled \$2,654,425 and consisted of research and development expenses of \$204,953, selling and marketing expenses of \$849,513 and general and administrative expenses of \$1,599,959. The research and development expenses related primarily to salaries and consulting services of \$172,186. Selling and marketing expenses consisted primarily of salaries and consulting services of \$185,146, amortization of intangibles of \$187,845, freight charges of \$155,847, merchant processing fees of \$103,819, and sales commissions of \$73,126. General and administrative expenses consisted of salaries and consulting services of \$476,862, accrued management and employee incentives of \$110,000 and legal, audit and accounting fees of \$245,881. Also included in general and administrative expenses is \$141,250 in non-cash stock compensation to consultants and board members.

Operating expenses for the three months ended March 31, 2018 totaled \$2,934,685 and consisted of research and development expenses of \$146,137, selling and marketing expenses of \$1,067,810 and general and administrative expenses of \$1,720,738. The research and development expenses relate primarily to salaries and consulting services of \$107,031. Selling and marketing expenses consisted primarily of salaries and consulting services of \$322,598, amortization of intangibles of \$187,845, freight charges of \$144,257, merchant processing fees of \$98,232, and sales commissions of \$72,168. General and administrative expenses consisted of salaries and consulting services of \$461,462, accrued management and employee incentives of \$225,000, legal, audit and accounting fees of \$252,023. Also included in general and administrative expenses is \$244,184 in non-cash stock compensation to consultants and board members.

Operating Profit. The operating profit from continuing operations for the three months ended March 31, 2019 was \$507,651 compared with operating profit of \$194,483 for the three months ended March 31, 2018. The increase in operating profit for the three months ended March 31, 2019 as compared to the three months ended March 31, 2018 is primarily attributable to the lower operating expenses incurred in the three months ended March 31, 2019 as compared to the three months ended March 31, 2018.

Net Loss from Continuing Operations. The net loss from continuing operations for the three months ended March 31, 2019 was \$292,973 compared to a net loss of \$676,855 for the three months ended March 31, 2018. The net loss for the three months ended March 31, 2019 was primarily attributable to the operating profit discussed above of \$507,651 offset by interest expense incurred of \$586,201 and an unfavorable change in fair value of contingent consideration of \$214,423. The net loss from continuing operations for the three months ended March 31, 2018 was \$676,855 and was primarily attributable to operating profit of \$194,483 offset by interest expense incurred of \$757,478 and an unfavorable change in fair value of contingent consideration of \$197,709 and an income tax benefit of \$83,849.

Liquidity and Capital Resources

We generated operating income from continuing operations of \$507,651 and incurred a net loss from continuing operations of \$292,973 for the three months ended March 31, 2019.

Cash and Working Capital. As of March 31, 2019, the Company had cash and stockholders' equity of \$1,227,803 and \$14,827,899, respectively. At March 31, 2019, the Company's continuing operations had a working capital deficiency of \$1,736,869.

Cash Generated by Operating Activities. Our primary ongoing uses of operating cash relate to payments to subcontractors and vendors for product, research and development, salaries and related expenses and professional fees. Our vendors and subcontractors generally provide us with normal trade payment terms. During the three months ended March 31, 2019, net cash provided by operating activities totaled \$765,858, which was comprised of a net loss of \$292,973, positive non-cash adjustments to reconcile net loss to net cash used in operating activities of \$748,519, and changes in operating assets and liabilities of positive \$310,312, as compared to net cash used in operating activities of \$65,450 for the three months ended March 31, 2018, which was comprised of a net loss of \$676,855, positive non-cash adjustments to reconcile net loss to net cash used in operating activities of \$821,276, and changes in operating assets and liabilities of negative \$209,871.

Cash Used in Investing Activities. During the three months ended March 31, 2019 and 2018, we did not have any net cash used in investing activities.

Cash Provided by Financing Activities. During the three months ended March 31, 2019, net cash provided by financing activities totaled \$1,267,606 and was primarily related to the net proceeds received from the sale of stock of \$1,282,810 from our January 2019 At-the-Market Offering which was partially offset by fees paid in connection with equity offerings totaling \$15,204. During the three months ended March 30, 2018, net cash provided by financing activities totaled \$48,276 and was primarily related to the net proceeds received from the exercising of warrants into common stock of \$200,000 partially offset by a pay down in short-term debt of \$106,481 and fees paid in connection with equity offerings of \$45,243.

Sources of Liquidity. We have generated operating income from continuing operations of \$507,651 and incurred a net loss from continuing operations of \$292,973 during the three months ended March 31, 2019. As of March 31, 2019, the Company (excluding discontinued operations) had a working capital deficiency of \$1,736,869 and stockholders' equity of \$14,827,899. Certain of these factors raise substantial doubt about the Company's ability to sustain operations and to continue as a going concern for at least one year from the issuance of these financial statements.

As of March 31, 2019, the Company had cash of \$1,227,803.

Given our cash position at March 31, 2019, anticipated future cash proceeds from the sale of common stock from the January 2019 At-the Market Offering and our projected cash flow from operations over the next twelve months, we believe that we will have sufficient capital to sustain operations and to continue as a going concern over the next twelve months following the date of this report to alleviate such substantial doubt. In order to execute our long-term strategic plan to develop and commercialize our core products, fulfill our product development commitments and fund our obligations as they come due, we may need to raise additional funds, through public or private equity offerings, debt financings, or other means. Should we not be successful in obtaining the necessary financing, or generating sufficient revenue to fund our operations, we would need to curtail certain of our operational activities.

The Company can give no assurance that any cash raised subsequent to March 31, 2019 will be sufficient to execute its business plan or meet its obligations. The Company can give no assurance that additional funds will be available on reasonable terms, or available at all, or that it will generate sufficient revenue to fund its operations.

Impact of Inflation

We believe that our business has not been affected to a significant degree by inflationary trends during the past three years. However, inflation is still a factor in the worldwide economy and may increase the cost of purchasing products from our contract manufacturers in Asia, as well as the cost of certain raw materials, component parts and labor used in the production of our products. It also may increase our operating expenses, manufacturing overhead expenses and the cost to acquire or replace fixed assets. We have generally been able to maintain or improve our profit margins through productivity and efficiency improvements, cost reduction programs and to a lesser extent, price increases, and we expect to be able to do the same during the remainder of fiscal year 2019. As such, we do not believe that inflation will have a significant impact on our business during the remainder of fiscal year 2019.

Off Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not have any undisclosed borrowings or debt, and we have not entered into any synthetic leases. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

Recent Accounting Pronouncements

See Note 3 to our condensed consolidated financial statements for the three months ended March 31, 2019, included elsewhere in this document.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are not required to provide the information required by this Item since we are a smaller reporting company, as defined in Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we are required to perform an evaluation of our disclosure controls and procedures, as such term is defined in Rule 13a-15(e) under the Exchange Act, as of March 31, 2019. Management has not completed such evaluation but has concluded, based on the material weaknesses in our internal controls over financial reporting described below, that our disclosure controls and procedures were not effective as of March 31, 2019 to provide reasonable assurance that information required to be disclosed by us in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

As of March 31, 2019, our management concluded that certain previously disclosed material weaknesses in our internal controls over financial reporting continue to exist. Specifically, we have difficulty in accounting for complex accounting transactions due to an insufficient number of accounting personnel with experience in that area and limited segregation of duties within our accounting and financial reporting functions. Management has recently hired an assistant controller with significant experience to help address this situation. Additional time is required to expand our staff, fully document our systems, implement control procedures and test their operating effectiveness before we can conclude that we have remediated our material weaknesses.

Changes in Internal Controls

There were no changes in the Company’s internal control over financial reporting that occurred during the three months ended March 31, 2019 that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

Limitations of the Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, do not expect that our disclosure controls and procedures will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include, but are not limited to, the realities that judgments in decision making can be faulty and that breakdowns can occur because of simple errors. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

From time to time we may be involved in various claims and legal actions arising in the ordinary course of our business. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the executive officers of our company or any of our subsidiaries, threatened against or affecting our company, or any of our subsidiaries in which an adverse decision could have a material adverse effect upon our business, operating results, or financial condition.

Item 1A. Risk Factors

As a smaller reporting company, we are not required to provide the information required by this Item.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

There have been no material changes to the procedures by which security holders may recommend nominees to our Board of Directors.

Item 6. Exhibits

| Exhibit Number | Description |
|----------------|---|
| 10.1 | LogicMark, LLC Senior Secured Credit Agreement, dated May 3, 2019 |
| 10.2 | LogicMark, LLC Security Agreement, dated May 3, 2019 |
| 10.3 | LogicMark, LLC Securities Pledge Agreement, dated May 3, 2019 |
| 10.4 | LogicMark, LLC Intellectual Property Security Agreement, dated May 3, 2019 |
| 10.5 | Guaranty, dated May 3, 2019 |
| 31.1 | Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 31.2 | Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 32.1 | Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2 | Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 101.INS | XBRL Instance Document |
| 101.SCH | XBRL Schema Document |
| 101.CAL | XBRL Calculation Linkbase Document |
| 101.DEF | XBRL Definition Linkbase Document |
| 101.LAB | XBRL Label Linkbase Document |
| 101.PRE | XBRL Presentation Linkbase Document |

In accordance with SEC Release 33-8238, Exhibits 32.1 and 32.2 are being furnished and not filed.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Nxt-ID, Inc.

Date: May 15, 2019

By: /s/ Gino M. Pereira
Gino M. Pereira
Chief Executive Officer
(Duly Authorized Officer and
Principal Executive Officer)

Date: May 15, 2019

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Principal Financial Officer
(Duly Authorized Officer and
Principal Financial Officer)

EXHIBIT INDEX

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In accordance with SEC Release 33-8238, Exhibits 32.1 and 32.2 are being furnished and not filed.

\$16,500,000

SENIOR SECURED CREDIT AGREEMENT

Dated as of May 3, 2019

Among

LOGICMARK, LLC
as Borrower,

[REDACTED]

and

[REDACTED]

as Administrative Agent and Collateral Agent

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SENIOR SECURED CREDIT AGREEMENT

This SENIOR SECURED CREDIT AGREEMENT (this “*Agreement*”) is entered into as of May 3, 2019, among LogicMark, LLC, a Delaware limited liability company (“*Borrower*”), each financial institution from time to time party hereto as lender (each, a “*Lender*” and collectively, the “*Lenders*”), and [REDACTED], as administrative agent for the Lenders (in such capacity, and together with its successors and assigns, the “*Administrative Agent*”) and as collateral agent for the Lenders (in such capacity, and together with its successors and assigns, the “*Collateral Agent*”).

RECITALS

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Article I hereof;

WHEREAS, Lenders have agreed to extend a Term Loan pursuant to the terms and conditions hereof;

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“*Accounting Changes*” means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

“*Administrative Agent*” has the meaning specified in the first paragraph of this Agreement or any successor administrative agent appointed in accordance with Section 9.09.

“*Administrative Agent’s Office*” means, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify Borrower and the Lenders.

“*Affiliate*” means, in respect of any Person:

(a) any Person which, directly or indirectly, controls, is controlled by or is under common control with such Person; and for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” or “under common control with”) means the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting Equity Interests or by contract or otherwise;

(b) any Person who beneficially owns or holds 10% or more of any class of shares (or, in the case of a Person that is not a corporation, 10% or more of the partnership or other Equity Interests) of such Person; or

(c) any Person, 10% or more of any class of shares (or in the case of a Person that is not a corporation, 10% or more of the partnership or other Equity Interests) of which is beneficially owned or held by such Person or a Subsidiary of such Person.

“*Agent-Related Persons*” means the Agents, together with their respective Affiliates, and the officers, directors, employees, partners, agents and attorneys-in-fact of such Agents and their Affiliates.

“*Agents*” means, collectively, the Administrative Agent and the Collateral Agent.

“*Aggregate Commitments*” means the Term Loan Commitments of all the Lenders as in effect from time to time. As of the Closing Date, the amount of the Aggregate Commitments is \$16,500,000.

“*Agreement*” has the meaning specified in the introductory paragraph hereto.

“*Applicable Lending Office*” means for any Lender, such Lender’s office, branch or affiliate as notified to the Administrative Agent and Borrower or as otherwise specified in the Assignment and Assumption pursuant to which such Lender became a party hereto, any of which offices may, subject to Section 3.01(e) and Section 3.02, be changed by such Lender upon ten (10) days’ prior written notice to the Administrative Agent and Borrower; *provided* that for the purposes of the definition of “Excluded Taxes” and Section 3.01, any such change shall be deemed an assignment made pursuant to an Assignment and Assumption.

“*Approved Fund*” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or Affiliate of an entity that administers, advises or manages a Lender.

“*Assignment and Assumption*” means an Assignment and Assumption substantially in the form of Exhibit D.

“*Attorney Costs*” means and includes all reasonable and documented fees, out-of-pocket expenses and actual disbursements of any law firm or, other than with respect to the fees and expenses set forth in Section 10.04(a) and (b), other external legal counsel.

“*Attributable Indebtedness*” means, at any date, (a) in respect of any Capital Lease Obligation (other than a lease resulting from a Sale Leaseback) of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Capital Lease, (c) in respect of any Sale Leaseback, the lesser of (i) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor be extended) and (ii) the fair market value of the assets subject to such transaction, and (d) all Synthetic Debt of such Person.

“*Audited Financial Statements*” means the audited financial statements described in Section 4.01(e)(i).

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“*Board*” has the meaning specified in Section 6.17.

“*Borrower*” has the meaning specified in the introductory paragraph hereto.

“*Business Day*” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the Laws of, or are in fact closed in, the State of New York; *provided, however*, that when used in connection with determining the LIBO Rate, the term “Business Day” shall exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“*Capital Expenditures*” means, for any period and with respect to any Person, any and all expenditures made by such Person or any of its Subsidiaries in such period for assets added to or reflected in its property, plant and equipment accounts or other similar capital asset accounts or comparable items or any other capital expenditures that are, or should be, set forth as “additions to plant, property and equipment” on the consolidated financial statements of such Person and its Subsidiaries prepared in accordance with GAAP, whether such asset is purchased for cash or financed as an account payable or by the incurrence of Indebtedness, accrued as a liability or otherwise.

“*Capital Lease*” means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

“*Capital Lease Obligation*” means, with respect to any Person, all monetary or financial obligations of such Person and its Subsidiaries under any Capital Leases, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date on which such lease may be terminated by the lessee without payment of a penalty; *provided* that any obligations that were not required to be included on the balance sheet of such Person as capital lease obligations when incurred but are subsequently re-characterized as capital lease obligations due to a change in accounting rules after the Closing Date shall for all purposes hereunder not be treated as a Capital Lease Obligation.

“*Cash Equivalents*” means any of the following, to the extent owned by the Loan Parties free and clear of all Liens other than Liens created under the Collateral Documents and having a maturity of not greater than 365 days from the date of acquisition thereof: (a) readily marketable direct obligations of the Government of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the Government of the United States, (b) insured certificates of deposit or time deposits with any domestic commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the Government of the United States, (d) securities with maturities of 365 days or less from the date of acquisition that are issued or fully guaranteed by any state, district or territory of the United States, by any political subdivision or taxing authority of any such state, district or territory or by any foreign government, the securities of which state, district or territory, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s, (e) securities with maturities of six (6) months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (b) of this definition, (f) money market mutual or similar funds that invest substantially all of their assets in one or more type of securities satisfying the requirements of clauses (a) through (e) of this definition, or (g) Investments, classified in accordance with GAAP as Current Assets of the Loan Parties, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions having capital of at least \$500,000,000, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a) and (b) of this definition.

“*Casualty Event*” means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

“*CERCLA*” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time.

“*CERCLIS*” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“*Change in Law*” means (a) the adoption of any law, treaty, order, policy, rule or regulation after the date of this Agreement, (b) any change in any law, treaty, order, policy, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any guideline, request or directive issued or made after the date hereof by any central bank or other Governmental Authority (whether or not having the force of law); *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in implementation thereof and (y) 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 regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“*Change of Control*” means (a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (i) shall have acquired beneficial ownership of 51% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of Parent or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of Parent; (b) the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of Parent cease to be occupied by Persons who either (i) were members of the board of directors of Parent on the Closing Date, or (ii) were nominated for election by the board of directors of Parent, a majority of whom were directors on the Closing Date or whose election or nomination for election was previously approved by a majority of such directors; or (c) Parent shall cease to own 100% of the voting and economic Equity Interests of its Subsidiaries.

“*Closing Date*” means the date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“*Closing Fee*” has the meaning specified in Section 2.05.

“*Code*” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“*Collateral*” means all the “Collateral” as defined in any Collateral Document and all other property or assets that are required under the terms of the Loan Documents to be subject to Liens in favor of the Administrative Agent and/or the Collateral Agent for the benefit of the Secured Parties and shall include the Mortgaged Properties, if any.

“*Collateral Agent*” has the meaning specified in the first paragraph of this Agreement or any successor collateral agent appointed in accordance with Section 9.09.

“*Collateral and Guarantee Requirement*” means, at any time, the requirement that:

(a) the Collateral Agent shall have received each Collateral Document required to be delivered on the Closing Date pursuant to Section 4.01 or pursuant to Section 6.11 or Section 6.13 at such time, in each case duly executed by each Loan Party party thereto;

(b) all Obligations shall have been unconditionally guaranteed (the “*Guarantees*”) jointly and severally on a senior basis by Parent, each Subsidiary of Parent (other than Borrower and, subject to Section 6.20, Fit Pay) and each Subsidiary of Borrower and each of their respective Subsidiaries, including, as of the Closing Date, those that are listed on Schedule 1 hereto (each, a “*Guarantor*” and, collectively, “*Guarantors*”);

(c) the Obligations and the Guarantees shall have been secured by a first priority security interest in (i) all the Equity Interests of the Loan Parties; *provided* that any Equity Interests constituting “stock entitled to vote” within the meaning of Treasury Regulations Section 1.956-2(c)(2) shall be treated as voting Equity Interests for purposes of this clause (c) and (ii) all of the Equity Interests of any Subsidiary that is directly held by the Loan Parties, and, in the case of each of clauses (i) and (ii) above, the Collateral Agent shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(d) the Obligations and the Guarantees shall have been secured by a first-priority security interest in all Indebtedness of any Loan Party that is owing to any other Loan Party, which shall be evidenced by a promissory note or an instrument and shall have been pledged pursuant to the applicable Collateral Document, and the Collateral Agent shall have received all such promissory notes or certificated instruments, together with note powers or other instruments of transfer with respect thereto endorsed in blank;

(e) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guarantees shall have been secured by a perfected first priority security interest (subject to Liens permitted under Section 7.01) in, and mortgages on, substantially all tangible and intangible assets of the Loan Parties (including but not limited to accounts receivable, deposit accounts, inventory, machinery and equipment, investment property, cash, Intellectual Property, other general intangibles, owned real property, intercompany Indebtedness and proceeds of the foregoing); *provided, however*; that (v) no security interest in fee-owned real property other than Material Owned Property shall be required, (w) no security interest in motor vehicles and other assets subject to certificates of title shall be required, (x) subject to Section 6.13, no security interests (including in respect of interests in partnerships, joint ventures and other non-Wholly-owned entities) to the extent (and for the duration) that the granting of a security interest in such asset would be prohibited by applicable law or agreements containing enforceable anti-assignment clauses not overridden by the Uniform Commercial Code or other applicable law shall be required, (y) any security interest in Intellectual Property shall exclude any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (z) no security interest in property created or incurred pursuant to Section 7.01(h) subject to Capital Lease or purchase money financing permitted under Section 7.03(c) to the extent (and for the duration) that the granting of a security interest in such asset would be prohibited under the agreement evidencing or otherwise governing the related Indebtedness and not overridden by the Uniform Commercial Code or other applicable law (the assets described in the foregoing clauses (v) through (z), collectively, "*Excluded Property*").

(f) none of the Collateral shall be subject to any Liens other than Liens permitted by Section 7.01; and

(g) the Administrative Agent shall have received the Mortgages with respect to each Material Owned Property required to be delivered pursuant to this Collateral and Guarantee Requirement or Section 6.11 at such time as set forth therein (the "*Mortgaged Properties*"), together with:

(i) evidence that counterparts of the Mortgages with respect to the Mortgaged Properties have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices as necessary to create a valid first and subsisting Lien on the property described therein in favor of the Collateral Agent for the benefit of the Secured Parties (subject only to Liens of the nature referred to in Section 5.07(b)) along with evidence reasonably satisfactory to the Administrative Agent that all filing and recording taxes and fees payable with respect to the Mortgages have been paid or received by the issuer of the Mortgage Policies (or, in the event that the Administrative Agent waives a Mortgage Policy for any Mortgaged Property, an escrow agent reasonably satisfactory to the Administrative Agent);

(ii) fully paid American Land Title Association Lender's Extended Coverage (or other reasonably satisfactory coverage if such coverage is not available in the applicable jurisdiction) title insurance policies (the "*Mortgage Policies*") in form and substance reasonably satisfactory to the Administrative Agent, together with such endorsements that are reasonably required by the Administrative Agent and which lenders typically receive in the jurisdiction where the Mortgaged Property is located, in an amount reasonably acceptable to the Administrative Agent, issued by title insurers reasonably acceptable to the Administrative Agent and insuring the Mortgages to be valid first and subsisting Liens on the real property described therein, in a customary form in the jurisdiction where the Mortgaged Property is located free and clear of all Liens (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances (*provided* that if a survey is not available pursuant to paragraph (iii) below, such Mortgage Policies may include the standard survey exception and the Administrative Agent shall not require any endorsement that will require delivery of a survey), except Liens of the nature referred to in Section 5.07(b);

(iii) American Land Title Association/American Congress on Surveying and Mapping form surveys, for which all necessary fees (where applicable) have been paid, dated no more than ninety (90) days before the date of delivery of such surveys (or such date as the Administrative Agent agrees in its reasonable discretion), certified to the Administrative Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Administrative Agent by a land surveyor duly registered and licensed in the States in which the real property described in such surveys is located, showing no material defects except Liens of the nature referred to in Section 5.07(b) and otherwise reasonably acceptable to the Administrative Agent;

(iv) satisfactory evidence of insurance required to be maintained pursuant to Section 6.07, or otherwise required by the terms of the Mortgages, in respect of Mortgaged Properties;

(v) favorable opinions of local counsel for the Loan Parties (i) in states in which the Mortgaged Properties are located, with respect to the enforceability and perfection of the Mortgages and any related fixture filings in form and substance reasonably satisfactory to the Administrative Agent and (ii) in states in which the Loan Parties to the Mortgages are organized or formed, with respect to the valid existence, corporate power and authority of such Loan Parties in the granting of the Mortgages, in form and substance reasonably satisfactory to the Administrative Agent;

(vi) (A) evidence as to whether each Material Owned Property is in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards (a “*Flood Hazard Property*”) pursuant to a standard flood hazard determination form ordered and received by the Collateral Agent, and (B) if such Material Owned Property is a Flood Hazard Property, (1) evidence as to whether the community in which such Material Owned Property is located is participating in the National Flood Insurance Program, (2) the applicable Loan Party’s written acknowledgment of receipt of written notification from the Collateral Agent as to the fact that such Material Owned Property is a Flood Hazard Property and as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (3) copies of the applicable Loan Party’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance satisfactory to the Collateral Agent and naming the Collateral Agent as sole loss payee on behalf of the Secured Parties; and

(vii) such consents and agreements of other third parties, such estoppel letters and other confirmations, and such other actions that, in each case, the Administrative Agent and the Collateral Agent may reasonably deem necessary in order to create valid and subsisting Liens on the property described in the Mortgages shall have been delivered or taken, in each case to the extent the same can be obtained or taken with the use of commercially reasonable efforts.

The foregoing definition shall not require the creation or perfection of pledges of or security interests in, or the delivery of particular documents with respect to, particular assets if and for so long as the Administrative Agent and Borrower mutually agree in their reasonable discretion that the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance or surveys in respect of such assets shall be excessive in relation to the benefits to be obtained by the Lenders therefrom.

The Administrative Agent may grant extensions of time for the perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the time as set forth therein for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in its discretion, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

“*Collateral Documents*” means, collectively, the Security Agreement, the Securities Pledge Agreement, the Intellectual Property Security Agreement, the Mortgages, any collateral assignments, any security agreements, pledge agreements or other similar agreements, or any supplements to any of the foregoing, delivered to the Collateral Agent and the Lenders pursuant to the Collateral and Guarantee Requirement, Section 4.01(c) and (d), Section 6.11, or Section 6.13, the Guaranty and each of the other agreements, instruments or documents that creates or purports to create a Lien or Guarantee in favor of the Collateral Agent for the benefit of the Secured Parties.

“*Collateral Questionnaire*” means a certificate in form satisfactory to Collateral Agent that provides information with respect to the personal or mixed property of each Loan Party.

“*Committee*” has the meaning specified in Section 6.17.

“*Communications*” has the meaning specified in Section 10.02(e).

“*Compliance Certificate*” means a certificate substantially in the form of Exhibit C-1 or Exhibit C-2, as applicable.

“*Consolidated Adjusted EBITDA*” means, for any period, an amount determined for Borrower and its Subsidiaries on a consolidated basis equal to (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) Consolidated Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) in an aggregate amount not to exceed \$250,000 in any trailing twelve month period, minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income, plus (iii) other income, plus (iv) the charges and expenses set forth on Schedule 1.01.

“*Consolidated Capital Expenditures*” means, for any period, the aggregate of all expenditures of Borrower and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in “purchase of property and equipment or which should otherwise be capitalized” or similar items reflected in the consolidated statement of cash flows of Borrower and its Subsidiaries.

“*Consolidated Fixed Charges*” means, for any period, the sum, without duplication, of the amounts determined for Borrower and its Subsidiaries on a consolidated basis equal to (a) Consolidated Interest Expense, (b) scheduled payments of principal on Consolidated Total Debt, (c) the current portion of taxes provided for with respect to such period in accordance with GAAP, plus (d) cash dividends or distributions paid, or the purchase, redemption or other acquisition or retirement for value (including in connection with any merger or consolidation), by Borrower or any of its Subsidiaries, in respect of the Equity Interests of Borrower or any of its Subsidiaries.

“*Consolidated Interest Expense*” means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Consolidated Total Debt, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Swap Contracts.

“*Consolidated Net Income*” means, for any period, (a) the net income (or loss) of Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (b) the sum of (i) the income (or loss) of any Person (other than a Subsidiary of Borrower) in which any other Person (other than Borrower or any of its Subsidiaries) has a joint interest, plus (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Borrower or is merged into or consolidated with any of Borrower’s Subsidiaries or that Person’s assets are acquired by Borrower or any of Borrower’s Subsidiaries, plus (iii) the income of any Subsidiary of Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, plus (iv) any gains or losses attributable to Dispositions, plus (v) (to the extent not included in clauses (i) through (v) above) any net extraordinary gains or net extraordinary losses.

“*Consolidated Total Debt*” means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

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

“*Credit Extension*” means a borrowing consisting of the Term Loan made by the Lenders pursuant to Section 2.01.

“*Cure Right*” has the meaning specified in Section 8.05.

“*Current Assets*” means, at any date, all assets of Borrower which under GAAP would be classified as current assets (excluding any cash or Cash Equivalents and any intercompany accounts or assets).

“*Current Liabilities*” means, at any date, all liabilities of Borrower which under GAAP would be classified as current liabilities, other than current maturities of long term Indebtedness which is not then in default or otherwise due and payable (excluding any accruals pursuant to a management incentive plan).

“*Debt Equivalents*” means, in respect of any Person, (a) any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a Change of Control), (i) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise, (ii) is convertible into or exchangeable for Indebtedness or Debt Equivalents, or (iii) is redeemable or subject to any repurchase requirement arising at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days following the Maturity Date, (b) if such Person is a Subsidiary of Parent, any preferred stock of such Person which by its terms is mandatorily redeemable or redeemable at the option of the holder prior to the date which is ninety-one (91) days following the Maturity Date and (c) any Disqualified Equity Interests of such Person.

“*Debt Service*” means, for any period, cash interest expense of Borrower for such period plus scheduled principal amortization of all Indebtedness of Borrower for such period.

“*Debtor Relief Laws*” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, fraudulent transfer, reorganization, or similar debtor relief Laws of the United States or any similar foreign, federal or state law for the relief of debtors from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“*Default Rate*” means an interest rate equal to the interest rate otherwise applicable to the Term Loan plus 5.00% per annum.

“*Deposit Account*” means any deposit account (as such term is defined in the UCC as adopted and in effect in the State of New York), including without limitation, a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“*Disposition*” or “*Dispose*” means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or other disposition to, or any exchange of property with, any Person (other than to or with a Loan Party), in one transaction or a series of transactions, of all or any part of any Loan Party’s businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests of any Loan Party. For purposes of clarification, “*Disposition*” shall include (x) the sale or other disposition for value of any contracts, (y) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification) or (z) any disposition of property through a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law.

“*Disqualified Equity Interests*” means, with respect to any Person, any Equity Interest of such Person which, by its terms, or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable, or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Term Loan and all other Obligations that are accrued and payable), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date; *provided* that, if such Equity Interests are issued pursuant to a plan for the benefit of employees of any Loan Party or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by any Loan Party in order to satisfy applicable statutory or regulatory obligations.

“Dollars” means lawful money of the United States.

“Eligible Assignee” means (a) any Lender, (b) any Approved Fund of any Lender, (c) any Affiliate of any Lender and (d) any other Person that is a commercial bank, insurance company, finance company, financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D of the Securities Act); *provided* that in any event, “Eligible Assignee” shall not include (i) any natural person or (ii) any Loan Party or any of their respective Subsidiaries or Affiliates.

“Environmental Action” means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, proceeding, consent order or consent agreement relating to any Environmental Law, any Environmental Permit or Hazardous Material or arising from alleged injury or threat to health and safety as it relates to any Hazardous Material or the environment, including, without limitation, (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages relating to Releases of Hazardous Materials or actual or alleged violations of Environmental Laws and (b) by any Governmental Authority or third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

“Environmental Laws” means any and all federal, provincial, local and foreign statutes, laws, regulations, ordinances, rules, decrees or other governmental restrictions of legal effect relating to the environment, to the release of any Hazardous Materials into the environment or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials but only to the extent such Environmental Laws are legally applicable to any Loan Party pursuant to any Environmental Law.

“Environmental Liability” means, in respect of any Person, any and all legal obligations and liabilities under Environmental Laws for any Release caused by such Person or which is discovered or uncovered during the ownership or control of any real property by such Person and which adversely impacts any Person, property or the environment whether or not caused by a breach of applicable laws (including Environmental Laws).

“Environmental Permit” means any permit, approval, hazardous waste identification number, license or other authorization issued by or submitted to a Governmental Authority required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“*Equity Issuance*” means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by Parent of any cash capital contributions.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended from time to time and Treasury regulations promulgated and rulings issued thereunder.

“*ERISA Affiliate*” means any trade or business (whether or not incorporated) that is under common control with any Loan Party and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“*ERISA Event*” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations at any facility of any Loan Party or ERISA Affiliate as described in Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan, notification of any Loan Party or ERISA Affiliate concerning the imposition of withdrawal liability or notification that a Multiemployer Plan is insolvent or is in reorganization within the meaning of Title IV of ERISA (or that is in endangered or critical status, within the meaning of Section 305 of ERISA); (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (g) a determination that any Pension Plan is, or is expected to be, in “at-risk” status (within the meaning of Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); or (h) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Pension Plan.

“*Event of Default*” has the meaning specified in Section 8.01.

“*Excess Cash Flow*” means, for the most recently completed Test Period, Consolidated Adjusted EBITDA for such period, minus, without duplication:

(a) Debt Service for such period;

(b) permanent repayments of Indebtedness (so long as not already reflected in Debt Service) made with cash by Borrower during such period (it being understood that the foregoing deductions shall not duplicate deductions from Excess Cash Flow taken pursuant to Section 2.02(b)(i)); and

(c) the absolute value of the difference, if negative, of the amount of Net Working Capital at the end of the prior Test Period in excess of the amount of Net Working Capital at the end of such period;

provided that any amount deducted pursuant to any of the foregoing clauses that will be paid after the close of such period shall not be deducted again in a subsequent period.;

plus, without duplication, the difference, if positive, of the amount of Net Working Capital at the end of the prior Test Period in excess of the amount of Net Working Capital at the end of such period.

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

“*Excluded Equity Issuance*” means the issuance of Equity Interests by Parent so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the aggregate Net Cash Proceeds of such issuances do not exceed (A) \$5,000,000 in any Fiscal Year and (B) \$15,000,000 over the term of this Agreement.

“*Excluded Property*” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“*Excluded Taxes*” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated and whether or not arising out of this Agreement), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Foreign Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Term Loan or Term Loan Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Term Loan or Term Loan Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“*Existing Credit Facility*” means that certain Senior Secured Credit Agreement, dated as of May 24, 2018, by and among Borrower, the lenders party thereto and Sagard Holdings Manager LP, as administrative agent and collateral agent, as amended, amended and restated, supplemented or otherwise modified prior to the date hereof.

“*Extraordinary Receipts*” means any cash received by the Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.02(b)(ii) or (iv) hereof), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance, (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments and (g) any purchase price adjustment received in connection with any purchase agreement.

“*Facility*” means the facility provided under this Agreement.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds 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 (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“*Financial Officer Certification*” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Parent that such financial statements fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“*Financial Plan*” has the meaning specified in Section 6.01(f).

“*Fiscal Quarter*” means a fiscal quarter of any Fiscal Year.

“*Fiscal Year*” means the fiscal year of the Loan Parties, as applicable, ending on December 31 of each calendar year.

“*Fit Pay*” means Fit Pay, Inc., a Delaware corporation.

“*Fit Pay Earnout*” means the cumulative amount of those certain “Earnout Payments”, as such term is defined in the Fit Pay Merger Agreement.

“*Fit Pay Merger Agreement*” means that certain Agreement and Plan of Merger, dated as of May 19, 2017, by and among Parent, Fit Pay, Fit Merger Sub, Inc., Michael Orlando, Giesecke & Devrient Mobile Security America, Inc., the other stockholders of Fit Pay, and Michael Orlando as the “Shareholder Representative” representing the other stockholders.

“*Fit Pay Trigger Date*” has the meaning specified in Section 6.20.

“*Fixed Charge Coverage Ratio*” means, as of any date of determination, the ratio of (a)(i) Consolidated Adjusted EBITDA for the trailing 12 month period most recently ended minus (ii) Consolidated Capital Expenditures for such 12 month period to (b) Consolidated Fixed Charges for such 12 month period.

“*Flood Hazard Property*” has the meaning specified in clause (g)(vi) of the definition of “Collateral and Guarantee Requirement.”

“*Foreign Lender*” means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is a resident or organized under the laws of a jurisdiction other than that in which Borrower is a resident for tax purposes.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States.

“*Fund*” means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“*GAAP*” means United States generally accepted accounting principles in effect as of the date of determination thereof.

“*Governmental Authority*” means any nation or government, any provincial, state, local, municipal or other political subdivision thereof, and any entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Governmental Authorization*” means any authorization, approval, consent, franchise, license, covenant, order, ruling, permit, certification, exemption, notice, declaration or similar right, undertaking or other action of, to or by, or any filing, qualification or registration with, any Governmental Authority.

“*Granting Lender*” has the meaning specified in Section 10.07(g).

“*Guarantee*” has the meaning specified in the definition of “Collateral and Guarantee Requirement” and shall be substantially in the form of Exhibit E.

“*Guarantee Obligations*” means, with respect to any Person, any obligation or arrangement of such Person to guarantee or intended to guarantee any Indebtedness or other payment obligations (“*primary obligations*”) of any other Person (the “*primary obligor*”) in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guarantee, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the Obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement or (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof. The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Guarantee Obligation) 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.

“*Guarantor Subsidiary*” means each Guarantor that is a Subsidiary of Parent (other than Borrower and, subject to Section 6.20, Fit Pay) or Borrower and each of their respective Subsidiaries.

“*Guarantor*” and “*Guarantors*” have the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“*Guaranty*” means, collectively, (a) the Guarantee and (b) each other guaranty and guaranty supplement delivered pursuant to the Collateral and Guarantee Requirement or Section 6.11.

“*Hazardous Materials*” means any material, substance or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as “hazardous,” “toxic,” a “pollutant,” a “contaminant,” a “deleterious substance,” “dangerous goods,” “radioactive” or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, greenhouse gases, mold, urea formaldehyde insulation, chlorofluorocarbons and all other ozone-depleting substances.

“*Indebtedness*” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) accounts payable and other accrued liabilities incurred in the ordinary course of business not past due for more than one hundred twenty (120) days after its stated due date (except for accounts payable contested in good faith), (ii) any earn-out obligation until such obligation is both required to be reflected as a liability on the balance sheet of such Person in accordance with GAAP and not paid after becoming due and payable and (iii) deferred or equity compensation arrangements entered into in the ordinary course of business and payable to directors, officers or employees), (e) all Indebtedness (excluding prepaid interest thereon) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed but, in the case of Indebtedness which is not assumed by such Person, limited to the lesser of (x) the amount of such Indebtedness and (y) the fair market value of such property, (f) all Guarantee Obligations by such Person of Indebtedness of others, (g) all Attributable Indebtedness of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (excluding the portion thereof that has been fully cash collateralized in a manner permitted by this Agreement), (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, surety bonds and performance bonds, whether or not matured, (j) all Debt Equivalents of such Person and (k) the Swap Termination Value under outstanding Swap Contracts at such time to which such Person is a party. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is directly liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Anything herein to the contrary notwithstanding, obligations in respect of any Indebtedness that has been irrevocably defeased (either covenant or legal) or satisfied and discharged pursuant to the terms of the instrument creating or governing such Indebtedness shall not constitute Indebtedness.

“Indemnified Liabilities” has the meaning specified in Section 10.05.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.05.

“Information” has the meaning specified in Section 10.08.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intellectual Property” has the meaning specified in Section 5.17.

“Intellectual Property Security Agreement” means, collectively, (a) the Intellectual Property Security Agreement executed by the Loan Parties in the form of Exhibit H, and (b) each other Intellectual Property Security Agreement Supplement executed and delivered pursuant to the Collateral and Guarantee Requirement or Section 6.11.

“Intellectual Property Security Agreement Supplement” has the meaning specified in Section 6.11.

“Interest Payment Date” means, the first Business Day of each calendar month commencing on the first such date to occur after the Closing Date.

“Interest Period” means, (a) initially, the period beginning on (and including) the Closing Date and ending on (and including) the last day of the calendar month in which the Closing Date occurs and (b) thereafter, the period beginning on (and including) the first day of each succeeding calendar month and ending on the earlier of (and including) (i) the last day of such calendar month and (ii) the Maturity Date.

“*Investment*” in any Person, means (a) any direct or indirect purchase or other acquisition by a Loan Party of, or of a beneficial interest in, any of the Equity Interests of such Person; (b) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Parent from any Person, of any Equity Interests of such Person; and (c) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Parent or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

“*Laws*” means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“*Lender*” means any Lender that may be a party to this Agreement from time to time and, in the case of each such Lender, including their respective successors and assigns as permitted hereunder (each of which is referred to herein as a “*Lender*”).

“*Leverage Ratio*” means the ratio as of the last day of any calendar month of (a)(i) Consolidated Total Debt as of such day to (b) Consolidated Adjusted EBITDA for the trailing twelve month period ending on such date.

“*LIBO Rate*” shall mean, for any day, the one-month fluctuating rate (expressed as a percentage per annum and adjusted as described in the last sentence of this definition of LIBO Rate) calculated on a three hundred and sixty (360) day calendar year for deposits in United States Dollars as calculated by Intercontinental Exchange (ICE) Benchmark Administration Limited (“ICE”) (or any successor thereto) as of 11:00 a.m., Austin, Texas time, three (3) Business Days prior to such date with a term of one (1) month commencing that day. If such rate shall cease to be calculated by ICE (or any successor thereto) or if the Administrative Agent determines in good faith that the rate calculated by ICE no longer accurately reflects the rate available to the Administrative Agent in the London interbank market, the LIBO Rate shall be determined by the Administrative Agent to be the offered rate as announced by a recognized commercial service as representing the average LIBO rate for deposits in United States Dollars (for delivery on such day) as of 11:00 a.m., Austin, Texas time, three (3) Business Days prior to such date with a term of one (1) month commencing that day. If the rates referenced in the two preceding sentences are not available, LIBO will be determined by an alternate method reasonably selected by the Administrative Agent. LIBO shall be adjusted from time to time in the Administrative Agent’s sole discretion for then applicable reserve requirements, deposit insurance assessment rates, marginal emergency, supplemental, special and other reserve percentages, and other regulatory costs. Notwithstanding the foregoing, in no event shall the LIBO Rate be less than 2.00% per annum.

“*Lien*” means any assignment, mortgage, charge, pledge, lien, encumbrance, title retention agreement (including Capital Leases but excluding operating leases) or any other security interest whatsoever, howsoever created or arising, whether fixed or floating, legal or equitable, perfected or not, but specifically excludes any legal, contractual or equitable right of set-off.

“*Loan Documents*” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) any Guarantee, (e) any agency fee letter entered into between Borrower and the Administrative Agent in connection with the Facility, and (f) all other instruments and documents executed and delivered from time to time by or on behalf of any Loan Party in connection herewith or therewith.

“*Loan Parties*” means, collectively, (a) Parent, (b) Borrower and (c) each Guarantor.

“*Master Agreement*” has the meaning specified in the definition of “Swap Contract.”

“*Material Adverse Effect*” means a material adverse effect on and/or material adverse developments with respect to (a) the business operations, properties, assets, condition (financial or otherwise) or prospects of Borrower and its Subsidiaries taken as a whole; (b) a significant portion of the industry or business segment in which Borrower or its Subsidiaries operate or rely upon if such effect or development is reasonably likely to have a material adverse effect on Borrower and its Subsidiaries taken as a whole; (c) the ability of any Loan Party to fully and timely perform its Obligations; (d) the legality, validity, binding effect, or enforceability against a Loan Party of a Loan Document to which it is a party; or (e) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Loan Document.

“*Material Agreements*” means, collectively, (a) the agreements which are listed in Schedule 5.19 and (b) all other agreements to which any Loan Party or any of its properties are bound, from time to time, the absence or termination of any of which would reasonably be expected to result in a Material Adverse Effect.

“*Material Owned Property*” means (a) the real properties owned by any Loan Party listed on Schedule 5.07(b) and (b) any other real property owned by any Loan Party with a fair market value in excess of \$500,000.

“*Maturity Date*” shall mean May 3, 2022.

“*Moody’s*” means Moody’s Investors Service, Inc. and its successors.

“*Mortgage*” means collectively, the deeds of trust, trust deeds, deeds to secure debt and mortgages creating and evidencing a Lien on a Mortgaged Property made by the Loan Parties in favor or for the benefit of the Collateral Agent on behalf of the Secured Parties, in form and substance reasonably satisfactory to the Collateral Agent, executed and delivered pursuant to Section 4.01(d) (if applicable), Section 6.11 or Section 6.13, in each case as amended, restated, supplemented or otherwise modified from time to time.

“*Mortgage Policies*” has the meaning specified in paragraph (g) of the definition of “Collateral and Guarantee Requirement.”

“*Mortgaged Properties*” has the meaning specified in paragraph (g) of the definition of “Collateral and Guarantee Requirement.”

“*Multiemployer Plan*” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“*Narrative Report*” means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Parent and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable calendar month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate with comparison to and variances from the immediately preceding period and budget.

“*Net Cash Proceeds*” means:

(a) with respect to the Disposition of any asset by any Loan Party or any Extraordinary Receipts the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Extraordinary Receipts (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Extraordinary Receipts, any insurance proceeds or condemnation awards in respect of such Extraordinary Receipts actually received by or paid to or for the account of any Loan Party) over (ii) (A) the reasonable out-of-pocket expenses actually incurred and paid by any Loan Party in connection with such Disposition or Extraordinary Receipts (including, reasonable attorney’s, accountant’s and other similar professional advisor’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant, and other customary fees) to third parties (other than the Loan Parties or any of their Affiliates) and (B) taxes paid or reasonably estimated to be actually payable or that are actually accrued in connection therewith with respect to the current tax year as a result of any gain recognized in connection therewith by such Person or any of the direct or indirect stockholders thereof and attributable to such Disposition or Extraordinary Receipts; *provided* that, if the amount of any estimated taxes pursuant to this subclause (B) exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to any Equity Issuance or the incurrence or issuance of any Indebtedness by the Loan Parties not permitted under Section 7.03, the excess, if any, of (i) the sum of the cash received in connection with such incurrence or issuance over (ii) the investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other customary expenses (including reasonable attorney’s, accountant’s and other similar professional advisor’s fees), incurred by such Loan Party in connection with such incurrence or issuance to third parties (other than the Loan Parties or any of their Affiliates).

“*Net Working Capital*” means, at any time, Current Assets at such time minus Current Liabilities at such time.

“*Non-Consenting Lender*” shall have the meaning set forth in Section 2.11.

“*Note*” means a promissory note of Borrower payable to a Lender or its permitted assigns, substantially in the form of Exhibit B hereto, evidencing the aggregate Indebtedness of Borrower to such Lender resulting from the Term Loan made by such Lender.

“*NPL*” means the National Priorities List under CERCLA.

“*Obligations*” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party or other Subsidiary arising under any Loan Document or otherwise with respect to the Term Loan entered into with a Lender, 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 Loan Party or any other Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of any of their Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including Guarantee Obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees (including, without limitation, the Upfront Fee), premiums (including, without limitation, any Prepayment Premium), Attorney Costs, indemnities and other amounts payable by any Loan Party or any other Subsidiary under any Loan Document and (b) the obligation of any Loan Party or any other Subsidiary to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party or such Subsidiary.

“*Observer*” has the meaning specified in Section 6.17.

“*Organization Documents*” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, declaration, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“*Other Connection Taxes*” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Term Loan or Loan Document).

“*Other Taxes*” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“*Outstanding Amount*” means, on any date, the outstanding principal amount of the Term Loan, after giving effect to any borrowings, accretion of debt, and/or prepayments or repayments of the Term Loan occurring on such date.

“*Parent*” means NXT-ID, Inc., a Delaware corporation.

“*Participant*” has the meaning specified in Section 10.07(d).

“*Participant Register*” has the meaning specified in Section 10.07(d).

“*PATRIOT Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

“*PBGC*” means the Pension Benefit Guaranty Corporation (or any successor thereof).

“*Pension Plan*” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA) other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the past five (5) years.

“*Permitted Cure Equity*” means Qualified Equity Interests of Parent that are issued in connection with Parent’s exercise of a Cure Right pursuant to Section 8.05.

“*Permitted Indebtedness*” has the meaning specified in Section 7.03.

“*Permitted Liens*” means Liens permitted to be incurred pursuant to Section 7.01.

“*PERS*” means a “personal emergency response system”.

“*Person*” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“*Plan*” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“*Prepayment Date*” has the meaning specified in Section 2.02(a)(i).

“*Prepayment Notice*” means a notice of prepayment in respect of any voluntary or mandatory prepayment in substantially the form of Exhibit A.

“*Prepayment Premium*” has the meaning specified in Section 2.02(c).

“*Pro Rata Share*” means, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Loan Commitments of such Lender under the Facility at such time and the denominator of which is the amount of the Aggregate Commitments under the Facility at such time; *provided* that if any Term Loan Commitment has been terminated, then the Pro Rata Share of each Lender shall be determined based on the outstanding principal amount of the Term Loan held by such Lender divided by the aggregate principal amount of the outstanding Term Loan held by all Lenders.

“*Projections*” has the meaning specified in Section 4.01(e).

“*Promissory Note*” means that certain Promissory Note, dated as of May 19, 2017, made by Parent in favor of Michael Orlando, with a face amount of \$851,841.89.

“*Qualified Cash*” means, as of any date of determination, (a) for the first 15 days after the Closing Date (or such later period that may be extended in the Collateral Agent’s sole discretion), the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of the Loan Parties in the United States as of such date, and (b) thereafter, the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of the Loan Parties in the United States as of such date, which deposit accounts are subject to Control Agreements (as defined in the Security Agreement).

“*Qualified Equity Interests*” means any Equity Interests that are not Disqualified Equity Interests.

“*Recipient*” means (a) the Administrative Agent or (b) any Lender, as applicable.

“*Reference Rate*” means for any day, the rate per annum equal to the greater of: (a) the rate of interest published from time to time in the “Money Rates” section of The Wall Street Journal as the U.S. Prime Rate for such day (or, if such source is not available, such alternate source as determined by the Administrative Agent) and (b) the sum of (i) the Federal Funds Rate plus (ii) 1.25%.

“*Register*” has the meaning specified in Section 10.07(c).

“*Registered*” means, with respect to Intellectual Property, issued by, registered with, renewed by or the subject of a pending application before any Governmental Authority or Internet domain name registrar.

“*Release*” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leeching or migration of any Hazardous Material in or into the environment (including the abandonment or disposal of any barrels, tanks, containers or receptacles containing any Hazardous Material), or out of any vessel or facility, including the movement of any Hazardous Material through the air, soil, subsoil, surface, water, ground water, rock formation or otherwise.

“*Replacement Lender*” shall have the meaning set forth in Section 2.11.

“*Reportable Event*” means with respect to any Plan any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“*Required Lenders*” means, as of any date of determination, one or more Lenders having more than 50% of the Total Facility Exposure held by all Lenders.

“*Responsible Officer*” means the chief executive officer, president, chief financial officer, treasurer or, except for purposes of Sections 6.03 or 6.04, any other similar officer or a Person performing similar functions of a Loan Party (and, as to any document delivered on the Closing Date, to the extent acceptable to the Administrative Agent in its sole discretion or required by the terms of this Agreement, any secretary or assistant secretary of a Loan Party). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“*Restricted Payment*” means (x) any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, retraction, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest (including pursuant to any management incentive plan), or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof) and including any thereof acquired through the exercise of warrants or rights of conversion, exchange or purchase and (y) any payment or distribution pursuant to a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law.

“*Retained ECF*” means all Excess Cash Flow amounts that are not required to prepay the Term Loan pursuant to Section 2.02(b)(i).

“*S&P*” means Standard & Poor’s Ratings Services LLC, a division of The McGraw-Hill Companies, Inc., and its successors.

“*Sale Leaseback*” means any transaction or series of related transactions pursuant to which any Loan Party (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

“*SEC*” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“*Secured Obligations*” has the meaning specified in the Security Agreement.

“*Secured Parties*” means, collectively, the Administrative Agent, the Collateral Agent and the Lenders.

“*Securities Act*” means the Securities Act of 1933, as amended from time to time.

“*Securities Pledge Agreement*” means, collectively, (a) the Securities Pledge Agreement executed by certain Loan Parties substantially in the form of Exhibit G and (b) each Securities Pledge Agreement Supplement executed and delivered pursuant to the Collateral and Guarantee Requirement or Section 6.11.

“*Securities Pledge Agreement Supplement*” has the meaning specified in Section 6.11.

“*Security Agreement*” means, collectively, (a) the Security Agreement executed by the Loan Parties substantially in the form of Exhibit F and (b) each Security Agreement Supplement executed and delivered pursuant to the Collateral and Guarantee Requirement or Section 6.11.

“*Security Agreement Supplement*” has the meaning specified in Section 6.11.

“*Series C Designation*” means Parent’s certain Certificate of Designations, Preferences and Rights of Series C Non-Convertible Voting Preferred Stock, as was filed with the Secretary of State of the State of Delaware on May 23, 2017.

“*Shareholders’ Equity*” means, as of any date of determination, consolidated shareholders’ equity of the Loan Parties as of that date determined in accordance with GAAP.

“*Solvent*” and “*Solvency*” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property (for the avoidance of doubt, calculated to include goodwill and other intangibles) of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“*SPC*” has the meaning specified in Section 10.07(g).

“*Subsidiary*” of a Person means:

(a) a corporation of which another person alone or in conjunction with its other Subsidiaries owns an aggregate number of voting Equity Interests sufficient to enable the election of a majority of the directors regardless of the manner in which other voting Equity Interests are voted;

(b) a corporation of which another person alone or in conjunction with its other Subsidiaries has, through the operation of any agreement or otherwise, the ability to elect or cause the election of a majority of the directors or otherwise exercise control over the management and policies of such corporation;

(c) any partnership of which at least a majority of the outstanding income or capital interests and/or at least a majority of the voting interests of such partnership or, in the case of a limited partnership, any general partner thereof, are owned by a person alone or in conjunction with its other Subsidiaries; and

(d) any trust or other person of which at least a majority of the outstanding beneficial or ownership interests (however designated) are owned by a person alone or in conjunction with its other Subsidiaries.

“*Surviving Indebtedness*” means any Indebtedness of Parent or any of its Subsidiaries outstanding immediately before and after giving effect to the Transaction as specified on Schedule 7.03.

“*Swap Contract*” means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Swap Contracts, as determined by the applicable counterparty in accordance with the terms thereof and in accordance with customary methods for calculating mark-to-market values under similar arrangements by such counterparty.

“*Synthetic Debt*” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “*Indebtedness*” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“*Synthetic Lease Obligation*” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including any Sale Leaseback), in each case, creating obligations that do not appear on the balance sheet of such Person but which could be characterized as the indebtedness of such Person (without regard to accounting treatment).

“*Taxes*” means any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, stamp taxes, withholdings or other charges imposed by any Governmental Authority (including additions to tax, penalties and interest with respect thereto).

“*Term Loan*” has the meaning specified in Section 2.01(a).

“*Term Loan Commitment*” has the meaning specified in Section 2.01. As of the Closing Date the aggregate amount of Term Loan Commitments is \$16,500,000.

“*Termination Date*” has the meaning specified in Section 9.11(a).

“*Test Period*” means, at any date of determination, with respect to any measurement of Excess Cash Flow, the most recently completed Fiscal Quarter for which financial statements were delivered pursuant to Section 6.01(b).

“*Threshold Amount*” means \$250,000.

“*Total Facility Exposure*” means, as of any date of determination, the sum of (a) Total Outstandings as of such date and (b) the then unfunded Term Loan Commitments (if any).

“*Total Outstandings*” means, as of any date of determination, the then aggregate Outstanding Amount of the Term Loan.

“*Trade Announcement*” has the meaning specified in Section 10.08.

“*Transaction*” means, collectively, (a) extension of the Term Loan Commitments under this Agreement and the funding of the Term Loan on the Closing Date, (b) the consummation of any other transactions in connection with the foregoing and (c) the payment of the fees and expenses, including prepayment premiums, incurred in connection with any of the foregoing.

“*Unaudited Financial Statements*” means the unaudited financial statements described in Section 4.01(e)(ii) and (e)(iii).

“*Uniform Commercial Code*” or “*UCC*” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any security interest in any item or items of Collateral.

“*United States*” and “*U.S.*” mean the United States of America.

“*U.S. Tax Compliance Certificate*” has the meaning specified in Section 3.01(g)(ii)(B)(3).

“*VAMC*” means The Veterans Health Administration Medical Centers.

“*Waivable Mandatory Prepayment*” has the meaning specified in Section 2.02(d).

“*Wholly-owned*” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

“*Withdrawal Liability*” means the liability of a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“*Withholding Agent*” means any Loan Party and the Administrative Agent.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, paragraph, clause, subclause, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term “including” is by way of example and not limitation.

(iv) 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.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(d) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(e) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine or neuter forms.

(f) References in this Agreement to “determination” by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase “to the knowledge of any Loan Party” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer’s duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

Section 1.03 Accounting Terms. (a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein; *provided, however,* that if Borrower notifies the Administrative Agent that Borrower requests an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then the Administrative Agent and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred and (ii) Borrower shall provide to the Administrative Agent and the Lenders a written reconciliation in form and substance reasonably satisfactory to the Administrative Agent, between calculations of any applicable ratios, baskets and other requirements hereunder before and after giving effect to such Accounting Change. Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 840 on the definitions and covenants herein, GAAP as in effect on the Closing Date shall be applied and (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Where reference is made to a Person “and its Subsidiaries on a consolidated basis” or similar language, such consolidation shall not include any subsidiaries other than Subsidiaries.

(c) Where reference is made to consolidating financial statements of Parent and its Subsidiaries, for the avoidance of doubt, such financial statements shall include standalone financial statements of the Borrower, Parent, and each other Subsidiary of Parent (other than Fit Pay unless Fit Pay has become a Guarantor pursuant to Section 6.20).

(d) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

Section 1.07 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

ARTICLE II

THE TERM LOAN COMMITMENTS AND CREDIT EXTENSION

Section 2.01 The Term Loan. (a) Subject to the terms and conditions set forth herein, on the Closing Date, each Lender agrees to make a term loan (the “*Term Loan*”) in an aggregate principal amount not to exceed the Term Loan Commitment set forth opposite such Lender’s name in Schedule 2.01(a) (such amount being referred to herein as such Lender’s “*Term Loan Commitment*”). The Term Loan Commitment of each Lender shall be automatically and permanently reduced by the principal amount of each Term Loan made by such Lender on the Closing Date.

(b) Amounts borrowed under this Section 2.01 and repaid or prepaid may not be re-borrowed.

(c) Subject to the scheduled payments required pursuant to Section 2.03, all the outstanding principal amount of the Term Loan, together with all accrued and unpaid interest thereon, and any fees and other amounts payable hereunder, shall be due and payable on the earlier of (i) the Maturity Date and (ii) the date of the acceleration of the Term Loan pursuant to Section 8.02.

Section 2.02 Prepayments.

(a) *Optional Prepayments.* (i) Borrower may, upon delivery of a Prepayment Notice to the Administrative Agent, at any time or from time to time, voluntarily prepay, in whole or in part (in a minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount for each partial prepayment) the outstanding principal amount of the Term Loan on any Business Day (the “*Prepayment Date*”) for an amount equal to the portion of the Term Loan being prepaid on such Prepayment Date, plus any accrued but unpaid interest on the aggregate principal amount of the portion of the Term Loan being prepaid, plus any applicable Prepayment Premium.

(ii) Any Prepayment Notice must be received by the Administrative Agent not later than 12:00 noon (Austin, Texas time) three (3) Business Days prior to any Prepayment Date and shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each prepayment of the Term Loan pursuant to this Section 2.02(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(iii) No partial prepayment shall be made under this Section 2.02(a) in connection with any event described in Section 2.02(b).

(b) Mandatory Prepayments.

(i) *Excess Cash Flow*. On the first Business Day of the calendar month immediately following delivery to the Administrative Agent of the financial statements for each Test Period pursuant to Section 6.01(b), commencing with the delivery to the Administrative Agent of the financial statements for the Fiscal Quarter ending September 30, 2019 or, if such financial statements are not delivered to the Administrative Agent on the date such statements are required to be delivered pursuant to Section 6.01(b), on the date such statements are required to be delivered to the Administrative Agent pursuant to Section 6.01(b), Borrower shall prepay the outstanding principal amount of the Term Loan in accordance with Section 2.02(d) in an amount equal to 50% of the Excess Cash Flow of Borrower and its Subsidiaries for such Test Period.

(ii) *Dispositions*. No later than the fifth Business Day following the date any Loan Party receives Net Cash Proceeds from the Disposition of any property (excluding Dispositions permitted pursuant to Section 7.05 (other than pursuant to Section 7.05(f) and Section 7.05(g)), Borrower shall prepay the Term Loan as set forth in Section 2.02(d) in an aggregate amount equal to 100% of all such Net Cash Proceeds realized or received in connection with such Disposition. For the avoidance of doubt, any prepayment made pursuant to this Section 2.02(b)(ii) as a result of a Disposition shall not be deemed to be a consent to any such Disposition or a cure or waiver of any Event of Default which occurs in connection with such Disposition, it being understood that such Event of Default may only be waived with the express consent of Required Lenders.

(iii) *Extraordinary Receipts*. No later than the fifth Business Day following the date any Loan Party receives Net Cash Proceeds from any Extraordinary Receipts, Borrower shall prepay the Term Loan as set forth in Section 2.02(d) in an aggregate amount equal to 100% of all such Net Cash Proceeds realized or received in connection with such Extraordinary Receipts; *provided*, so long as no Default or Event of Default shall have occurred and be continuing, Borrower shall have the option, instead of prepaying the Term Loan therewith, to invest such Net Cash Proceeds resulting from a Casualty Event in an aggregate amount not to exceed \$250,000 in any Fiscal Year within one hundred eighty (180) days of receipt thereof in productive assets of the general type used in the business of Borrower, which investment may include the repair, restoration or replacement of the applicable assets thereof. If Borrower elects to invest such Net Cash Proceeds resulting from a Casualty Event pursuant to the proviso above, Borrower shall provide notice of such election to the Administrative Agent at or prior to such time as prepayment would otherwise be due.

(iv) *Indebtedness and Equity Issuances*. On the date of receipt by any Loan Party from the incurrence or issuance of any Indebtedness (including Debt Equivalents) not expressly permitted to be incurred or issued pursuant to Section 7.03 or upon any Equity Issuance (other than any Excluded Equity Issuances), Borrower shall prepay the Term Loan as set forth in Section 2.02(d) in an aggregate amount equal to 100% of all such Net Cash Proceeds received therefrom. For the avoidance of doubt, the provisions of this Section 2.02(b) (iv) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(v) *Cure Right*. Immediately upon receipt by Borrower of the proceeds of any Permitted Cure Equity pursuant to Section 8.05, Borrower shall prepay the Term Loan as set forth in Section 2.02(d) in an aggregate amount equal to 100% of all such proceeds received therefrom.

(c) *Call Protection.* If Borrower prepays (or is deemed to pay in the case of an acceleration of the Term Loan), for any reason (including, but not limited to, any optional or mandatory payment after the occurrence of an Event of Default or after acceleration of the Term Loan including in connection with the commencement of any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws), all or any part of the principal balance of Term Loan pursuant to Section 2.02(a) or makes a mandatory prepayment of all or any part of the principal balance of the Term Loan pursuant to Sections 2.02(b)(ii), (iii), (iv) or (v), Borrower shall pay to Administrative Agent, for the benefit of all Lenders entitled to a portion of such prepayment a prepayment premium (the “*Prepayment Premium*”) on the amount so prepaid as follows (i) if the prepayment occurs on or prior to the first anniversary of the Closing Date, 7.0% of the amount so prepaid, (ii) if the prepayment occurs on the date immediately following the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, 5.0% of the amount so prepaid and (iii) thereafter, 0% of the amount so prepaid. Without limiting the generality of the foregoing, it is understood and agreed that if the Obligations are accelerated for any reason, including because of default, the commencement of any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws, sale, disposition or encumbrance (including that by operation of law or otherwise), the Prepayment Premium determined as of the date of acceleration will also be due and payable as though said Indebtedness was voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender’s lost profits as a result thereof. Any Prepayment Premium payable in accordance with the immediately preceding sentence shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination and Borrower agrees that it is reasonable under the circumstances currently existing. The Prepayment Premium shall also be payable (i) in the event the Obligations (and/or this Agreement or the Notes evidencing the Obligations) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means and/or (ii) upon the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations (and/or this Agreement or the Notes evidencing the Obligations) in any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws, foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means or the making of a distribution of any kind in any Insolvency Proceeding to the Administrative Agent, for the account of the Lenders, in full or partial satisfaction of the Obligations. BORROWER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION INCLUDING IN CONNECTION WITH ANY VOLUNTARY OR INVOLUNTARY ACCELERATION OF THE OBLIGATIONS PURSUANT TO ANY INSOLVENCY PROCEEDING OR OTHER PROCEEDING PURSUANT TO ANY DEBTOR RELIEF LAWS OR PURSUANT TO A PLAN OF REORGANIZATION. Borrower expressly agrees that: (A) the Prepayment Premium is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Company shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Borrower expressly acknowledges that its agreement to pay the Prepayment Premium to Lenders as herein described is a material inducement to Lenders to provide the Term Loan Commitments and make the Term Loan.

(d) *Application of Prepayments by Type of Loans.* Each voluntary and mandatory prepayment of the Term Loan pursuant to Section 2.02(a) and Section 2.02(b) shall be applied as follows:

first, to the payment of all fees, and all expenses specified in Section 10.04, to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest);

fourth, except in the case of a prepayment pursuant to Sections 2.02(b)(i) and (iii), to the payment of the Prepayment Premium, if any, on the Term Loan; and

fifth, to prepay the Term Loan on a pro rata basis (in accordance with the respective outstanding principal amounts thereof) in the inverse order of maturity.

Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of the Term Loan required to be made pursuant Section 2.02(b) pursuant to a Prepayment Notice. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Lender of the contents of Borrower's Prepayment Notice and of such Lender's Pro Rata Share of the prepayment. Anything contained herein to the contrary notwithstanding, in the event that Borrower is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Term Loan pursuant to Section 2.02(b), each Lender may exercise the option to refuse such mandatory prepayment by giving written notice to Borrower and the Administrative Agent of its election to do so on or before the first Business Day prior to the required prepayment date (it being understood that any Lender that does not notify Borrower and the Administrative Agent of its election to exercise such option on or before the first Business Day prior to the required prepayment date shall be deemed to have elected, as of such date, not to exercise such option). On the required prepayment date, Borrower shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Term Loan of such Lenders (which prepayment shall be applied to prepay the outstanding principal amount of the Obligations in accordance with Section 2.02(d)) and (ii) to the extent of any excess, to Borrower for working capital and general corporate purposes

(e) *Interest*. All prepayments under this Section 2.02 shall be accompanied by all accrued interest thereon.

Section 2.03 Repayment of Loans. The Term Loan shall be repayable in consecutive monthly installments, each of which shall be in an amount equal to \$ [REDACTED], each such installment to be due and payable, in arrears, on the first Business Day of each calendar month, commencing on the first Business Day of the first full calendar month after the Closing Date and ending on the Maturity Date. The remaining outstanding unpaid principal amount of the Term Loan and all accrued and unpaid interest thereon shall be due and payable on the earlier of (i) the date of the acceleration of the Term Loan in accordance with the terms hereof and (ii) the Maturity Date.

Section 2.04 Interest. (a) Subject to the provisions of Section 2.04(b), the Term Loan shall bear interest on the outstanding principal amount thereof for each Interest Period in an amount equal to the LIBO Rate plus 11.00% per annum payable in cash.

(b) Commencing upon the occurrence and during the continuance of any Event of Default, Borrower shall pay interest on (i) the principal amount of the Term Loan and (ii) to the extent then due and payable all other outstanding Obligations hereunder, in each case under clauses (i) and (ii) at a fluctuating interest rate per annum at all times equal to the interest rate set forth in Section 2.04(a) plus, the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest to the fullest extent permitted by applicable Laws) shall be due and payable upon demand.

(c) Interest on the Term Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after any judgment.

Section 2.05 Fees.

(a) *Closing Fee.* On or prior to the Closing Date, the Borrower shall pay to the Administrative Agent for the account of the Lenders, in accordance with their Pro Rata Shares, a nonrefundable closing fee (the "*Closing Fee*") equal to \$[REDACTED], which shall be deemed fully earned when paid (it being understood and agreed that the Closing Fee will be net funded from the Term Loan on the Closing Date).

(b) *Administrative Fee.* From and after the Closing Date and until the Termination Date, Borrower shall pay to the Administrative Agent a non-refundable administrative fee (the "*Administrative Fee*") equal to \$[REDACTED] each calendar month, which shall be deemed fully earned when paid and which shall be payable on the Closing Date (payable ratably based on the number of days remaining in the calendar month in which the Closing Date occurs) and monthly in advance thereafter on the first Business Day of each calendar month commencing with the first calendar month after the Closing Date.

(c) *Exit Fee.* Borrower shall pay to the Administrative Agent for the account of the Lenders, in accordance with their Pro Rata Shares, an exit fee (the "*Exit Fee*") in an amount equal to \$[REDACTED], which shall be deemed fully earned on the Closing Date and shall be due and payable on the earlier of (i) the Termination Date and (ii) the Maturity Date.

Section 2.06 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on the Term Loan for the day on which the Term Loan is made, and shall not accrue on the Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.07 Evidence of Indebtedness. (a) The Credit Extension made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender. The accounts or records maintained by each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extension made by the Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Pro Rata Share of the Term Loan in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Pro Rata Share of the Term Loan and payments with respect thereto.

(b) Entries made in good faith by each Lender in its account or accounts pursuant to Section 2.07(a), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from Borrower to such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of such Lender to make an entry, or any finding that an entry is incorrect, in such account or accounts shall not limit or otherwise affect the obligations of Borrower under this Agreement and the other Loan Documents.

Section 2.08 Payments Generally. (a) All payments to be made by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office and in immediately available funds not later than 3:00 p.m. (Austin, Texas time) on the date specified herein with contemporaneous confirmation by Borrower to the Administrative Agent via e-mail that such wire transfer of funds has been initiated. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. (Austin, Texas time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that if such extension would cause payment of interest on or principal of the Term Loan to be made in the next succeeding Fiscal Quarter, such payment shall be made on the immediately preceding Business Day.

(c) [Reserved].

(d) [Reserved].

(e) The obligations of the Lenders hereunder to fund their portion of the Term Loan are several and not joint. The failure of any Lender to fund its portion of the Term Loan shall not relieve any other Lender of its corresponding obligation to do so on such date, and neither the Administrative Agent nor any Lender shall be responsible for the failure of any other Lender to fund its portion of the Term Loan.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Term Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Term Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in the applicable provisions of Section 2.02(d) or Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the Outstanding Amount of the Term Loan at such time, in repayment or prepayment of such of the outstanding Term Loan or other Obligations then owing to such Lender.

Section 2.09 Sharing of Payments. If, other than as expressly provided elsewhere herein (including, without limitation, in Section 10.07), any Lender shall obtain on account of its Pro Rata Share of the Term Loan made by it any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its Pro Rata Share (or other share contemplated hereunder) thereof, such Lender shall promptly (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Pro Rata Share of the Term Loan made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of the Term Loan or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. Each Lender that purchases a participation pursuant to this Section 2.09 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.10 LIBO Not Determinable, Impracticability or Illegality. If on or before the day on which the LIBO Rate is to be determined the Administrative Agent determines in good faith or, with respect to the following clauses (ii) and (iii), the Required Lenders advise the Administrative Agent, that, (i) the LIBO Rate cannot be determined for any reason (including, without limitation, because the Administrative Agent determines that either inadequate or insufficient quotations of the London interbank offered rate exist or the use of "LIBOR" has been discontinued, (ii) the LIBO Rate will not adequately and fairly reflect the cost of maintaining the Term Loan or (iii) Dollar deposits in the principal amount of the Term Loan are not available in the London interbank market, the Administrative Agent shall, as soon as practicable thereafter, give written notice of such determination to Borrower and the Lenders. Upon any such determination or the occurrence and continuance of an Event of Default, the LIBO Rate shall be converted into the Reference Rate at the end of the then current Interest Period and the Term Loan shall at all times thereafter bear interest at the Reference Rate plus 9.25% per annum plus, if applicable, the Default Rate until the Administrative Agent (or the Required Lenders, as applicable) determine that the circumstances set forth in clauses (i) through (iii) above cease to exist (or, solely in the case of an Event of Default, such Event of Default has been cured or waived in accordance with this Agreement). Each determination by the Administrative Agent and Required Lenders hereunder shall be conclusive and binding absent manifest error.

Section 2.11 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.01(a) or (b), the consent of Administrative Agent and Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required shall not have been obtained; then, with respect to such Non-Consenting Lender, Administrative Agent may, by giving written notice to Borrower and any Non-Consenting Lender of its election to do so, elect to cause such Non-Consenting Lender (and such Non-Consenting Lender hereby irrevocably agrees) to assign its outstanding Term Loan in full to one or more Eligible Assignees (each a "Replacement Lender") in accordance with the provisions of Section 10.07 and such Non-Consenting Lender shall pay any fees payable thereunder in connection with such assignment; *provided*, (i) on the date of such assignment, the Replacement Lender shall pay to the Non-Consenting Lender an amount equal to the sum of an amount equal to the principal of, and all accrued interest on, all of the outstanding Term Loan of the Non-Consenting Lender, plus any Prepayment Premium, to the extent applicable; and (ii) each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Non-Consenting Lender, such Non-Consenting Lender shall no longer constitute a "Lender" for purposes hereof; *provided*, any rights of such Non-Consenting Lender to indemnification hereunder shall survive as to such Non-Consenting Lender.

ARTICLE III

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) *Defined Terms.* For purposes of this Section 3.01, the term “applicable law” includes FATCA.

(b) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) *Payment of Other Taxes by the Loan Parties.* The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) *Indemnification by the Loan Parties.* The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor accompanied by an explanation in reasonable detail, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) *Indemnification by the Lenders.* Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.07(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) *Evidence of Payments*. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) *Status of Lenders*. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Borrower:

(A) any Lender that is a U.S. Person shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “*U.S. Tax Compliance Certificate*”) and (y) executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by 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 Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) *Treatment of Certain Refunds.* If any party determines, in its reasonable discretion, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) *Survival.* Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Loan Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 3.02 Illegality. (a) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority that is a court, statutory board or commission has asserted that it is unlawful, for any Lender or its Applicable Lending Office to make, maintain or fund its portion of the Term Loan (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Borrower thereof following which (a) the Lender's Term Loan Commitment shall be suspended until such time as such Lender may again make and maintain its portion of the Term Loan hereunder and (b) if such Law shall so mandate, the Term Loan held by such Lender shall be prepaid by Borrower on or before such date as shall be mandated by such Law in an amount equal to 100% of the aggregate principal amount of the Term Loan held by such Lender, plus any accrued but unpaid interest on the aggregate principal amount of the Term Loan being prepaid.

(b) If any provision of this Agreement or any of the other Loan Documents would obligate Borrower to make any payment of interest with respect to the Facility or other amount payable to the Administrative Agent or any Lender in an amount or calculated at a rate which would be prohibited by any Law then, notwithstanding such provision, such amount or rates 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 any applicable law or so result in a receipt by the Administrative Agent or such Lender of interest with respect to its Term Loan and Term Loan Commitments at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:

(i) *first*, by reducing the amount or rate of interest required to be paid to the Administrative Agent or the affected Lender under Section 2.04; and

(ii) *thereafter*, by reducing any fees, commissions, premiums and other amounts required to be paid to the Administrative Agent or the affected Lender which would constitute interest with respect to the Term Loan or Term Loan Commitments for purposes of any applicable law.

Section 3.03 Increased Cost and Reduced Return; Capital Adequacy. (a) If any Lender reasonably determines that as a result of the introduction of or any Change in Law or a change in the interpretation of any Law with which such Lender or any lending office of such Lender, if any, is required to comply, in each case, after the date hereof, there shall be any increase in the cost to such Lender agreeing to make, making or maintaining the Term Loan, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.03(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes or (iii) Other Connection Taxes), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.04), Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender reasonably determines that the introduction of any Law regarding (i) capital adequacy or any change therein or in the interpretation thereof or (ii) liquidity requirement, or in each case any change therein or in the interpretation thereof with which such Lender (or its Applicable Lending Office) is required to comply, in each case after the date hereof, would have the effect of reducing the rate of return on the capital of such Lender, or any corporation controlling such Lender, to a level below that which such Lender, or the corporation controlling such Lender, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of any corporation controlling such Lender with respect to capital adequacy) as a consequence of such Lender's obligations hereunder, then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.04), Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) days after receipt of such demand.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.03 shall not constitute a waiver of such Lender's right to demand such compensation.

(d) If any Lender requests compensation under this Section 3.03, then such Lender will, if requested by Borrower, use commercially reasonable efforts to designate another Applicable Lending Office for its Term Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Applicable Lending Office(s) to suffer no material economic, legal or regulatory disadvantage; and *provided further* that nothing in this Section 3.03(d) shall affect or postpone any of the Obligations of Borrower or the rights of such Lender pursuant to Section 3.03(a), (b) or (c).

(e) As of the Closing Date, each Lender to its knowledge, is unaware of any Change in Law that would cause increased costs, reduced return, or adjustment of capital adequacy as contemplated by this Section 3.03.

Section 3.04 Matters Applicable to All Requests for Compensation. The Administrative Agent or any Lender claiming compensation under this Article III shall deliver a certificate to Borrower setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, which shall be conclusive absent manifest error. In determining such amount, the Administrative Agent or such Lender, as the case may be, may use any reasonable averaging and attribution methods. With respect to any Lender's claim for compensation under Section 3.01, Section 3.02 or Section 3.03, Borrower shall not be required to compensate such Lender for any amount incurred more than ninety (90) days prior to the date that such Lender notifies Borrower of the event that gives rise to such claim; *provided* that if the circumstance giving rise to such claim is retroactive, then such 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 3.05 Survival. All of Borrower's obligations under this Article III shall survive termination of the Term Loan Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.01 Conditions to the Closing Date. The obligation of each Lender to make the Term Loan hereunder is subject to satisfaction or waiver in writing by the Lenders of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each properly executed by a Responsible Officer of the signing Loan Party, and each in form and substance satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement and the other Loan Documents by each Loan Party, Agent and Lender, as applicable;

(ii) an original Note executed by Borrower in favor of each Lender that has requested in writing a Note;

(iii) such certificates (including a certificate substantially in the form of Exhibit I) of resolutions or other corporate action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(iv) an opinion by Robinson Brog Leinwand Greene Genovese & Gluck, P.C., counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent;

(v) a certificate attesting to the Solvency of the Loan Parties (taken as a whole) on the Closing Date before and after giving effect to the Transaction, from the chief financial officer of Parent in substantially the form of Exhibit J hereto;

(vi) copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Collateral Agent with respect to the Loan Parties together with evidence that, upon satisfaction of the conditions precedent contained in any applicable payoff letters, all existing Liens (other than Permitted Liens) will be terminated and released and all actions required to terminate and release such Liens have been satisfactorily taken or will be capable of being satisfactorily undertaken substantially simultaneously with the closing of the Transaction; and

(vii) (A) Organization Documents of each Loan Party and (B) good standing certificates or certificates of status, as applicable, as of a date reasonably proximate to the Closing Date, from (1) the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation, and (2) the jurisdictions where the failure of a Loan Party to be qualified and in good standing could reasonably be expected to have a Material Adverse Effect and, where available, bring down certificates, for each Loan Party.

(b) As of the Closing Date, after giving effect to the Transaction, the Loan Parties will have no Indebtedness other than the Facility and any Surviving Indebtedness specified on Schedule 7.03. All amounts due or outstanding in respect of the Existing Credit Facility and any other Indebtedness other than the Facility and any Surviving Indebtedness specified on Schedule 7.03 shall have been repaid in full, all commitments (if any) in respect thereof terminated, all guarantees (if any) thereof discharged and released and all security therefor (if any) released, together with all fees and other amounts owing thereon, or documentation in form and substance reasonably satisfactory to the Administrative Agent to effect such release upon such repayment and termination shall have been delivered to the Administrative Agent.

(c) In order to create in favor of Collateral Agent, for the benefit of the Lenders, a valid, perfected first priority security interest in the personal property Collateral, Collateral Agent shall have received:

(i) evidence satisfactory to Collateral Agent of the compliance by each Loan Party of their obligations under the Collateral Documents (including, without limitation, their obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper, deposit account control agreements and any agreements governing securities accounts as provided therein);

(ii) a completed Collateral Questionnaire dated the Closing Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby, including (A) the results of a recent search, by a Person satisfactory to Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Loan Party in the jurisdictions specified in the Collateral Questionnaire, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens);

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Loan Party or any personal property Collateral is located as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iv) evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including without limitation, (any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 7.03(h)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(d) The Administrative Agent shall have received the Mortgages (including all leasehold Mortgages) with respect to each Material Owned Property, together with all additional documentation required to be delivered pursuant to clause (g) of the definition of “Collateral and Guarantee Requirement”.

(e) The Administrative Agent shall have received (i) the audited consolidated balance sheets and related statements of income (if any) and Shareholders’ Equity of Parent and its Subsidiaries and unaudited consolidating balance sheets and related statements of income (if any) for the Fiscal Year of Parent ended December 31, 2017, (ii) unaudited consolidated and consolidating balance sheets and related statements of income (if any) of Parent and its Subsidiaries for each subsequent fiscal quarter after December 31, 2017 ended at least forty-five (45) days before the Closing Date, (iii) unaudited consolidated and consolidating balance sheets and related statements of income (if any) of Parent and its Subsidiaries for each calendar month ended at least thirty-one (31) days before the Closing Date, (iv) a plan with respect to Borrower’s Capital Expenditures during the term of this Agreement and (v) forecasts prepared by management of Parent of consolidated and consolidating balance sheets and income statements of Parent and its Subsidiaries on a monthly basis for Fiscal Year 2019 and on a quarterly basis for Fiscal Year 2020, 2021 and Fiscal Year 202 (“*Projections*”), in each case, in form and substance satisfactory to the Administrative Agent and prepared in accordance with GAAP as in effect at the time of such preparation.

(f) The Administrative Agent and the Lenders shall have completed, to their satisfaction, all legal, tax, environmental, management and background checks, business and other due diligence with respect to the business, assets, liabilities, operations and condition (financial or otherwise) of the Loan Parties (which shall include a review of all Material Agreements with the Loan Parties’ customers and suppliers), in each case, in scope and determination satisfactory to the Administrative Agent in its sole discretion. The Administrative Agent shall have received a quality of earnings report from a Person who is not an Affiliate of the Borrower, in form and substance satisfactory to the Administrative Agent.

(g) Payment by Borrower of all accrued costs, fees and expenses (including applicable Attorney Costs and the reasonable and documented out-of-pocket fees and expenses of any other advisors) and any other compensation due and payable to the Administrative Agent and Lenders on the Closing Date shall have been received.

(h) The Administrative Agent shall have received reasonably satisfactory evidence of insurance required to be maintained pursuant to Section 6.07 and the Collateral Agent shall be named as an additional loss payee and additional insured, as applicable, thereunder.

(i) The Lenders shall have received on or prior to the Closing Date all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act and customary management background checks, in order to allow the Lenders to comply therewith, in each case, to the extent requested at least five (5) Business Days prior to the Closing Date.

(j) The Administrative Agent shall have received a certificate signed by a Responsible Officer of Borrower certifying as to Sections 4.01(k), (l) and (m) in substantially the form of Exhibit I.

(k) The representations and warranties of Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(l) No Default or Event of Default shall exist.

(m) There is no action, suit, investigation or proceeding pending or, to the knowledge of Borrower, threatened in any court or before an arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect.

(n) The Administrative Agent shall have received satisfactory evidence that Consolidated Adjusted EBITDA for the trailing 12 month period most recently ended is not less than \$5,500,000 with adjustments satisfactory to the Administrative Agent.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to the Agents and the Lenders that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its Subsidiaries (a) is duly incorporated, organized or formed, and validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws (including, without limitation, Regulation X of the Board of Governors of the Federal Reserve System), orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted, except, with respect to the foregoing clauses (c), (d) and (e), as would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transaction, (a) are within such Loan Party's corporate or other powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not and will not (i) contravene the terms of any of such Person's Organization Documents, (ii) except as set forth on Schedule 5.02, conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (z) any Material Agreement, or (iii) violate any material applicable Law.

Section 5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Collateral Agent, the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which are set forth on Schedule 5.03 or have been duly obtained, taken, given or made and are in full force and effect, (iii) for those filings required by the Exchange Act and (iv) such approvals, consents, exemptions, authorizations, actions, notices and filings the failure to obtain or make would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect. All applicable waiting periods in connection with the Transaction have expired without any action having been taken by any competent authority restraining, preventing or imposing materially adverse conditions upon the Transaction or the rights of the Loan Parties or their Subsidiaries freely to transfer or otherwise dispose of, or to create any Lien on, any properties now owned or hereafter acquired by any of them.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect. (a) The Audited Financial Statements and Unaudited Financial Statements (A) fairly present in all material respects the financial condition of Parent as of the dates thereof and Parent's results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except, in the case of the Unaudited Financial Statements, changes resulting from customary year-end adjustments consistent with past practice and the absence of footnotes and (B) show all material Indebtedness and other liabilities, direct or contingent, of the Loan Parties as of the date hereof that are required to be reflected on a balance sheet prepared in accordance with GAAP, except for such Indebtedness and other liabilities incurred since the date of the Unaudited Financial Statements in the ordinary course of business.

(b) Since December 31, 2017, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(c) The Projections furnished to the Administrative Agent prior to the Closing Date are based on good faith estimates and assumptions made by the management of Borrower; *provided*, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material; *provided further*, as of the Closing Date, management of Borrower believed that the Projections were reasonable and attainable.

(d) (i) The audited consolidated financial statements of the Loan Parties most recently delivered pursuant to Section 6.01(c) and (ii) the unaudited consolidated and consolidating financial statements of the Loan Parties most recently delivered pursuant to Section 6.01(a) and (b), and the related consolidated and consolidating statements of income (if any) or operations and Shareholders' Equity for such periods (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (B) fairly present in all material respects the financial condition of the Loan Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of unaudited financial statements, to the absence of footnotes and to customary year-end adjustments consistent with past practice.

(e) The consolidated forecasted monthly expenses, balance sheets and statements of income (if any) the Loan Parties delivered to the Lenders pursuant to Section 6.01(f) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were reasonable in light of the conditions existing at the time of delivery of such forecasts; it being understood that actual results may vary from such forecasts and that such variations may be material.

Section 5.06 Litigation. There is no action, suit, investigation, litigation or proceeding affecting any Loan Party or its Subsidiaries, including any Environmental Action, pending or to the knowledge of the Loan Parties, threatened before any Governmental Authority or arbitrator that (i) would be reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the Transaction.

Section 5.07 Ownership of Property; Liens. (a) Each Loan Party and its Subsidiaries is the legal and beneficial owner of the Collateral pledged by it free and clear of any Lien, except for the Liens and security interests created or permitted under the Loan Documents including, any Liens permitted under Section 7.01.

(b) Each Loan Party and each of its Subsidiaries has good and marketable title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property used in the ordinary conduct of its business, free and clear of all Liens except for defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 5.07(b) hereto is a complete and accurate list of all real property owned by any Loan Party or any of its Subsidiaries, showing, as of the date hereof, the street address, state and any other relevant jurisdiction, record owner and fair market value. Set forth on Schedule 5.07(b) hereto is a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary is the tenant, showing as of the date hereof the street address, state and any other relevant jurisdiction, parties thereto, sublessee (if any), expiration date and annual base rental cost thereof.

(c) Except for the properties set forth on Schedule 5.07(b), as of the Closing Date, no Loan Party or any of its Subsidiaries owns any Material Owned Property.

Section 5.08 Perfection of Security Interests. Upon the making of the filings and taking of the other actions set forth on Schedule 5.08, all filings and other actions necessary to perfect the security interest in the Collateral created under the Collateral Documents have been duly made or taken and are in full force and effect, and the Collateral Documents create in favor of the Collateral Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected first priority security interest in the Collateral, securing the payment of the Secured Obligations, and having priority over all other Liens on the Collateral except in the case of (a) non-consensual Liens permitted under Section 7.01, to the extent any such Liens would have priority over the Liens in favor of the Collateral Agent pursuant to any applicable Law, and (b) Liens not required to be perfected by control or possession pursuant to the Collateral and Guarantee Requirement to the extent that all filings and other actions necessary or desirable to perfect such security interest have been duly taken.

Section 5.09 Environmental Compliance. Except as set forth on Schedule 5.09:

(a) The operations and properties of each Loan Party and each of its Subsidiaries comply in all material respects with all applicable Environmental Laws and Environmental Permits, all past non-compliance with such Environmental Laws and Environmental Permits has been resolved without ongoing obligations or costs, and no circumstances exist that would be reasonably likely to (i) to the knowledge of the Loan Parties, form the basis of an Environmental Action against any Loan Party or any Subsidiary or any of their properties or (ii) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law, which, in each case, individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect.

(b) (i) None of the properties currently or, to the knowledge of the Loan Parties, formerly, owned or operated by any Loan Party or any of its Subsidiaries is listed or, to such Loan Party's or each of its Subsidiaries' knowledge, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no, and, to the knowledge of the Loan Parties, never have been, any underground or aboveground storage tanks other than in compliance with applicable Environmental Laws or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of its knowledge, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries other than in compliance with applicable Environmental Laws; (iii) other than in compliance with applicable Environmental Laws, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or any of its Subsidiaries on any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries other than in material compliance with applicable Environmental Laws.

(c) (i) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any governmental or regulatory authority or the requirements of any Environmental Law; and (ii) all Hazardous Materials generated, used, treated, handled or stored at, or transported by or on behalf of any Loan Party or any of its Subsidiaries to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

(d) The Loan Parties have obtained all material Environmental Permits required for ownership and operation of their property and business as presently conducted. No Loan Party has received any written notification pursuant to any applicable Environmental Law or otherwise has knowledge that (i) any work, repairs, construction or Capital Expenditures are required to be made in order to be in or continue to be in compliance with any applicable Environmental Laws or any material Environmental Permit or (ii) any Environmental Permit is about to be reviewed, made subject to new limitations or conditions, revoked, withdrawn or terminated.

(e) Except as would not reasonably be expected to result in a material liability, no Loan Party nor any of its Subsidiaries has contractually assumed any liability or obligation under or relating to any applicable Environmental Law.

(f) Nothing contained in this Section 5.09 is intended to apply to any action, suit, investigation, litigation or proceeding (including any Environmental Action) relating to exposure to asbestos, in any form, or any asbestos containing materials.

Section 5.10 Taxes. (a) Each of the Loan Parties has timely filed all income and all other material tax returns and reports required to be filed, and has timely paid all Taxes (whether or not shown on such tax returns or reports) and all other amounts of federal, provincial, state, municipal, foreign and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are set forth on Schedule 5.10 or are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP.

(b) Except as set forth on Schedule 5.10 or as would not, individually or in the aggregate, be reasonably likely to result in any material liability, (i) there are no claims being asserted in writing with respect to any amounts of taxes, (ii) there are no presently effective waivers or extensions of statutes in writing with respect to any amounts of taxes, and (iii) no tax returns are being examined by, and no written notification of intention to examine has been received from, the Internal Revenue Service or any other taxing authority, in each case, with respect to the Loan Parties.

(c) No Loan Party is party to any tax sharing agreement other than with an affiliate included in a consolidated or combined tax return, *provided* that any such tax sharing agreement shall be subject to the restrictions in Section 7.08.

Section 5.11 Compliance with ERISA. (a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws, except as is not, either individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) none of the Loan Parties or any of their Subsidiaries has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan; and (iii) none of the Loan Parties or any of their Subsidiaries or any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA.

Section 5.12 Labor Matters. There are no strikes pending or to the knowledge of the Loan Parties, threatened against the Loan Parties that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of the Loan Parties have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All material payments due from the Loan Parties or for which any claim may be made against the Loan Parties, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Loan Parties to the extent required by GAAP. The consummation of the Transaction will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party (or any predecessor) is bound, other than collective bargaining agreements that, individually or in the aggregate, are not material to the Loan Parties.

Section 5.13 Insurance. The properties of the Loan Parties and their Subsidiaries are insured in the manner contemplated by Section 6.07.

Section 5.14 Subsidiaries; Equity Interests. As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Section 6.02(c) and Section 6.11 none of the Loan Parties have any Subsidiaries other than those specifically disclosed in Schedule 5.14, and all of the outstanding Equity Interests in each such Person and each such Subsidiary have been validly issued, are fully paid and non-assessable. As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Section 6.02(c) and Section 6.11, Schedule 5.14 (a) sets forth the name and jurisdiction of organization of each Subsidiary of each of the Loan Parties, (b) sets forth the ownership interest of each Loan Party and each of its Subsidiaries in each of their respective Subsidiaries, including the percentage of such ownership and (c) identifies each Person the Equity Interests of which are required to be pledged pursuant to the Collateral and Guarantee Requirement and Section 6.11.

Section 5.15 Margin Regulations; Investment Company Act; PATRIOT Act. (a) None of the Loan Parties or any of their Subsidiaries is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of the Credit Extension will be used for any purpose that violates Regulation U issued by the FRB.

(b) None of the Loan Parties or any of their Subsidiaries or any Person controlling such Loan Party or any of its Subsidiaries is required to be registered as an “investment company” under the Investment Company Act of 1940, as amended.

(c) None of the Loan Parties or any of their Subsidiaries is in material violation of any applicable laws relating to money laundering, including the PATRIOT Act, or terrorism, including Executive Order No. 13224 on Terrorist Financing, effective September 23, 2001, and the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended), or any enabling legislation or executive order relating thereto. None of the Loan Parties or any of their Subsidiaries will knowingly use the proceeds of the Term Loan in violation of any of the foregoing statutes.

(d) No Loan Party (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner that violates Section 2 of such executive order, or (iii) is a person on the list of “Specially Designated Nationals and Blocked Persons” or subject to blocking or specific trade restrictions under any other U.S. Department of Treasury’s Office of Foreign Assets Control regulation or implementing executive order.

Section 5.16 Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of the Loan Parties to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains when furnished any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that with respect to projections and other forward-looking information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation, it being understood that such projections may vary from actual results and that such variances may be material. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Borrower (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

Section 5.17 Intellectual Property. As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Section 6.02(c) and Section 6.11, set forth on Schedule 5.17 is a complete and accurate list of all Registered patents, trademarks, service marks, domain names and copyrights, owned by the Loan Parties as of such date, showing as of such date the jurisdiction in which each such item of Registered Intellectual Property is registered or in which an application is pending and the registration or application number. Each Loan Party owns or has the right to use, all of the trademarks, service marks, trade names, domain names, copyrights, patents, know-how, technology and other intellectual property recognized under applicable Law (collectively, “*Intellectual Property*”) that are material to the operation of their respective businesses as currently conducted and, to the knowledge of the Loan Parties, the use of such Intellectual Property by such Person or the operation of their respective businesses is not infringing upon any Intellectual Property rights held by any other Person except as would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect.

Section 5.18 Solvency. After giving effect to the Transaction and the other transactions contemplated hereby, the Loan Parties are, on a consolidated basis, Solvent.

Section 5.19 Material Agreements. Schedule 5.19 contains a true, correct and complete list of all the Material Agreements in effect on the Closing Date, which, together with any updates provided pursuant to Section 6.03(1), are in full force and effect and no defaults currently exist thereunder (other than as described in Schedule 5.19 or in such updates).

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Term Loan Commitment hereunder, any portion of the Term Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, Borrower shall, and shall cause each Loan Party to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) *Monthly Reports.* As soon as available, and in any event within twenty-five (25) days after the end of each calendar month, the consolidated and consolidating balance sheet of Parent and its Subsidiaries as at the end of such month and the related consolidated and consolidating statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a schedule of reconciliations for any reclassifications with respect to prior months or periods (and, in connection therewith, copies of any restated financial statements for any impacted month or period), a Financial Officer Certification and a Narrative Report with respect thereto and any other operating reports prepared by management for such period;

(b) *Quarterly Financial Statements.* As soon as available, and in any event within forty-five (45) days after the end of each Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter), the consolidated and consolidating balance sheets of Parent and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated and consolidating statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(c) *Annual Financial Statements.* As soon as available, and in any event within ninety (90) days after the end of each Fiscal Year, (i) the consolidated and consolidating balance sheets of Parent and its Subsidiaries as at the end of such Fiscal Year and the related consolidated and consolidating statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Marcum LLP or other independent certified public accountants of recognized national standing selected by Parent, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that their audit examination has included a review of the terms of the Loan Documents, (2) whether, in connection therewith, any condition or event that constitutes a Default or an Event of Default has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof, and (3) that nothing has come to their attention that causes them to believe that the information contained in any Compliance Certificate is not correct or that the matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof (such report shall also include (x) a detailed summary of any audit adjustments; (y) a reconciliation of any audit adjustments or reclassifications to the previously provided monthly or quarterly financials; and (z) restated monthly or quarterly financials for any impacted periods);

(d) *Compliance Certificate.* Together with each delivery of financial statements of Parent and its Subsidiaries pursuant to Sections 6.01(a), Section 6.01(b) and Section 6.01(c), a duly executed and completed Compliance Certificate;

(e) *Statements of Reconciliation after Change in Accounting Principles.* If, as a result of any change in accounting principles and policies from those used in the preparation of the Audited Financial Statements, the consolidated financial statements of Parent and its Subsidiaries delivered pursuant to Section 6.01(b) or 6.01(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(f) *Financial Plan.* As soon as practicable and in any event no later than the last day of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the Maturity Date (a "*Financial Plan*"), including (i) a forecasted consolidated and consolidating balance sheet and forecasted consolidated and consolidating statements of income and cash flows of Parent and its Subsidiaries for each such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based, (ii) forecasted consolidated and consolidating statements of income and cash flows of Parent and its Subsidiaries for each calendar month of each such Fiscal Year, (iii) forecasts demonstrating projected compliance with the requirements of Section 7.13 through the Maturity Date, and (iv) forecasts demonstrating adequate liquidity through the Maturity Date, together, in each case, with an explanation of the assumptions on which such forecasts are based all in form and substance reasonably satisfactory to the Administrative Agent.

(g) *Sales*. As soon as available, and in any event within thirty (30) days after the end of each calendar month, a report, in form and substance satisfactory to the Administrative Agent (it being agreed that the form of the report provided by Borrower to the Administrative Agent prior to the Closing Date is acceptable), setting forth total sales for each product of the Loan Parties and total sales to each customer of the Loan Parties during such calendar month; certified as true, correct and complete by a Responsible Officer of Borrower.

Section 6.02 Certificates; Reports; Other Information. Promptly deliver to the Administrative Agent for further distribution to each Lender:

(a) promptly after the same are publicly available, (i) copies of all annual, regular, periodic and special reports and registration statements which Parent files with the SEC or with any successor Governmental Authority (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and (ii) all press releases and other statements made available generally by any Loan Party to the public concerning material developments in the business of the Loan Parties;

(b) promptly after the receipt or furnishing thereof, copies of any material requests or material notices received by any Loan Party or any of its Subsidiaries (other than in the ordinary course of business) in respect of any instrument, indenture, loan or credit or similar agreement relating to Indebtedness in excess of the Threshold Amount;

(c) together with the delivery of each Compliance Certificate pursuant to Section 6.01(d) (other than with respect to a Compliance Certificate delivered with the financial statements pursuant to Section 6.01(a)), (i) a description of each event, condition or circumstance during the last Fiscal Quarter covered by such Compliance Certificate requiring a prepayment under Section 2.02(b), (ii) a list of Subsidiaries as of the date of delivery of such Compliance Certificate or a confirmation that there is no change in such information since the later of the Closing Date or the date of the last such list, (iii) a report supplementing Schedules 5.07(b) and 5.17 and Schedules I and IV of the Security Agreement and (iv) such other information required by the Compliance Certificate;

(d) within fifteen (15) days of filing or receipt of any written notification, copies of all Tax returns, waivers, amendments, requests for extension and other written notifications which any Loan Party files with, or receives from, the Internal Revenue Service or any other taxing authority;

(e) promptly after the same are available to the applicable Loan Parties, copies of all monthly bank statements for each Deposit Account that is subject to an account control agreement naming the Collateral Agent as secured party (or the equivalent) thereunder; provided, that prior to the Disposition of Fit Pay, the Loan Parties shall also provide weekly reports on each Friday of the amount of cash on deposit at such time in each Deposit Account that is subject to an account control agreement naming the Collateral Agent as secured party (or the equivalent) thereunder; and

(f) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 shall be delivered electronically to the Administrative Agent for further distribution to each Lender; *provided* that upon written request by the Administrative Agent, 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. Notwithstanding the foregoing, Borrower shall deliver originally executed Compliance Certificates to the Administrative Agent (in addition to the electronic copies pursuant to the foregoing). Each Lender shall be solely responsible for timely accessing electronically provided documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

Section 6.03 Notice Requirements; Other Information. (i) Promptly after a Responsible Officer obtains knowledge thereof, notify the Administrative Agent of each of the following events or circumstances, and, (ii) as soon as available, provide to the Administrative Agent, for prompt further distribution to each Lender, the following information and documents:

(a) the occurrence of any Default, which notice shall specify the nature thereof, the period of existence thereof and what action Borrower has taken or proposes to take with respect thereto;

(b) the occurrence of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) the commencement of, or any material development in, any litigation or governmental proceeding (including without limitation pursuant to any applicable Environmental Law) pending against any Loan Party that could reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect;

(d) the occurrence of any ERISA Event above the Threshold Amount or the breach of any representation in Section 5.12;

(e) the occurrence of any event triggering a Collateral and Guarantee Requirement under Section 6.11;

(f) any information with respect to environmental matters as required by Section 6.04(b);

(g) copies of all notices, requests and other documents received by any Loan Party or any of its Subsidiaries under or pursuant to any instrument, indenture, loan or credit or similar agreement relating to Indebtedness in excess of the Threshold Amount regarding or related to any event of default by any Loan Party thereto or any other event that could otherwise have a Material Adverse Effect and copies of any amendment, modification or waiver of any provision of any such instrument, indenture, loan or credit or similar agreement relating to any Indebtedness in excess of the Threshold Amount and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements relating to any Indebtedness in excess of the Threshold Amount as the Administrative Agent may reasonably request;

(h) a tax event or liability not previously disclosed in writing by Borrower to the Administrative Agent which would reasonably be expected to result in a liability having a Material Adverse Effect, together with any other information as may be reasonably requested by the Administrative Agent to enable the Administrative Agent to evaluate such matters;

(i) any occurrence of a Change of Control;

(j) any change (i) in any Loan Party's corporate name, (ii) any Loan Party's identity and corporate structure, (iii) any Loan Party's taxpayer identification number or (iv) any Loan Party's location of its principal place of business. Each Loan Party agrees that it will not, and will not permit any of its Subsidiaries to, permit or make any change referred to in this Section 6.03(j) unless all filings have been made under the Uniform Commercial Code within the time periods provided therein or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in the Collateral and for the Collateral Agent at all times following such change to have a valid, legal and perfected first priority security interest as contemplated by the Collateral Documents;

(k) promptly upon the discovery of any material inaccuracy, miscalculation or misstatement contained in any Compliance Certificate or other certificate provided for any period that affects any financial or other calculations, representations or warranties or other statements impacting any provision of this Agreement and any other Loan Document in any material respect, notice of such inaccuracy, miscalculation or misstatement together with an updated certificate including the corrected information, calculation or statement, as applicable;

(l) promptly, and in any event within ten (10) Business Days after (i) any Material Agreement of any Loan Party is terminated or amended in a manner that is materially adverse to any Loan Party, as the case may be, or (ii) any new Material Agreement is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to Administrative Agent (to the extent such delivery is permitted by the terms of any such Material Agreement, *provided*, no such prohibition on delivery shall be effective if it were bargained for by any Loan Party with the intent of avoiding compliance with this Section 6.03(l)), and an explanation of any actions being taken with respect thereto;

(m) each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 6.01(c), Borrower shall deliver to Collateral Agent an Officer's Certificate either (i) confirming that there has been no change in such information since the date of the Collateral Questionnaire delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section and/or identifying such changes, or (ii) certifying that all UCC financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Collateral Questionnaire or pursuant to clause (i) above to the extent necessary to perfect the security interests under the Collateral Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(n) any management letter delivered to management of any Loan Party by an independent registered public accounting firm; and

(o) any and all material information and/or documentation regarding any potential merger, acquisition or Change of Control transaction contemplated by any Loan Party, *provided* that the provision of any such information shall not be deemed to be a consent to any such merger or Change of Control transaction or a cure or waiver of any Event of Default which occurs in connection with such merger or Change of Control transaction, it being understood that such Event of Default may only be waived with the express consent of Required Lenders.

Section 6.04 Environmental Matters. (a) (i) Comply and cause each of its Subsidiaries and take all commercially reasonable efforts to cause all lessees and other Persons operating or occupying any real property owned or leased by the Loan Parties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; (ii) obtain and renew, and cause each of its Subsidiaries to obtain, maintain and timely renew, all Environmental Permits required under Environmental Laws for its operations and properties; and (iii) conduct, and cause each of its Subsidiaries to conduct, any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action required to remove and clean up all releases or threatened releases of Hazardous Materials from any of its properties, as required under, and in accordance with the requirements of all Environmental Laws; *provided, however,* that none of the Loan Parties shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and, to the extent required by GAAP, appropriate reserves are being maintained with respect to such circumstances.

(b) *Environmental Reporting Requirements.* Promptly, and in any event within ten (10) Business Days, after a Responsible Officer obtains knowledge thereof, notify the Administrative Agent of or, deliver to the Administrative Agent, for further distribution to each Lender copies of any and all material, non-privileged written communications and material, non-privileged documents concerning:

(i) any Environmental Action against or of any non-compliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that would (1) reasonably be expected to result in a liability to any Loan Party in excess of \$100,000 or (2) cause any Mortgaged Properties to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(ii) to the extent any of the following is reasonably expected to result in a liability to any Loan Party in excess of \$100,000: (1) any occurrence of any release or threatened release of Hazardous Materials required to be reported to any Governmental Authority under applicable Environmental Law, (2) any remedial actions taken by any Loan Party or its Subsidiaries in respect of any such release or threatened release that could reasonably be expected to result in an Environmental Action or (3) the Loan Parties' discovery of any occurrence of or condition on any real property adjoining or in the vicinity of any site or facility that would be reasonably expected to cause such site or facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) to the extent reasonably expected to result in a liability to any Loan Party in excess of \$100,000, any action proposed to be taken by any Loan Party to modify current operations in a manner that would reasonably be expected to subject the Loan Parties to any material additional obligations or requirements under Environmental Laws;

(iv) copies of all material environmental reports or audits (whether produced by any Loan Party or any third party or Governmental Authority) and any Phase I or Phase II reports in respect of any sites or real property owned, leased or operated by any Loan Party that are in possession or control of any Loan Party;

(v) to the extent any of the following is reasonably expected to result in a liability to any Loan Party in excess of \$100,000: copies of any and all material, non-privileged written communications with respect to (A) any Environmental Action, (B) any release or threatened release or non-compliance with any Environmental Law required to be reported to any Governmental Authority and (C) any request for information from a Governmental Authority that suggests such Governmental Authority is investigating the potential responsibility of any Loan Party as a potentially responsible party;

(vi) the good faith belief that a release of Hazardous Materials, or a violation of Environmental Law reasonably likely to result in a fine or penalty in excess of \$100,000, has occurred on or after the Closing Date, and within sixty (60) days after such request and at the expense of Borrower, any additional environmental site assessment reports for any of its or its Subsidiaries' properties described in such request prepared by an environmental consulting firm acceptable to the Administrative Agent, indicating the presence or absence of such Hazardous Materials and the estimated cost of any compliance, removal or remedial action in connection with any such Hazardous Materials on such properties; without limiting the generality of the foregoing, if the Administrative Agent reasonably determines at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of Borrower, and Borrower hereby grants and agrees to cause any Subsidiary that owns any property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof, the right, subject to the rights of tenants, to enter onto their respective properties to undertake such an assessment; and

(vii) any such other documents and information as the Administrative Agent may reasonably request from time to time.

Section 6.05 Maintenance of Existence. (a) Preserve, renew and maintain in full force and effect its legal existence, structure and name under the Laws of the jurisdiction of its organization and (b) take all commercially reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except pursuant to a transaction permitted by Section 7.04 and Section 7.05.

Section 6.06 Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment that are used or useful in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and make all commercially reasonable and appropriate repairs, renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof except where failure to do so would not reasonably be expected to materially adversely affect the use of the related property.

Section 6.07 Maintenance of Insurance. Maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Administrative Agent, and (ii) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Parent and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, Parent and its Subsidiaries will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name Collateral Agent, on behalf of Lenders as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, on behalf of Secured Parties as the loss payee thereunder and provides for at least thirty (30) days' prior written notice to Collateral Agent of any modification or cancellation of such policy. The Administrative Agent agrees that as of the Closing Date, the insurance coverages of Borrower and each other Loan Party complies with the terms of this Section.

Section 6.08 Compliance with Laws. Comply with the requirements of all Laws and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or property, except where such non-compliance is not, either individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and as are sufficient to permit the preparation of financial statements in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Loan Parties, as the case may be.

Section 6.10 Inspection Rights/Lender Meetings. (a) Permit representatives of the Administrative Agent to visit and inspect any properties of the Loan Parties and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Borrower, subject to such representative being subject to the supervision of Borrower's personnel; *provided, however,* that the Administrative Agent shall not exercise such rights more than four (4) times during any Fiscal Year absent the occurrence of an Event of Default.

(b) Borrower will (or Parent, as applicable), schedule one (1) telephonic or, at the discretion of the Administrative Agent, in-person conference per Fiscal Quarter among the Administrative Agent, the Lenders and the chief financial officer and chief executive officer of Parent to be held at Parent's corporate offices (or at such other location as may be agreed to by Borrower and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

Section 6.11 Covenant to Guarantee Obligations and Give Security. Upon (x) the formation or acquisition of any new direct or indirect Subsidiaries by any Loan Party or (y) the acquisition of any property by any Loan Party (it being understood that, in the case of real property under the foregoing clauses (x) and (y), only the requirements of Section 6.11(g), which requirements shall apply only to Material Owned Property, Section 6.11(b) and Section 6.11(f) shall apply), and such property, in the sole judgment of the Collateral Agent, shall not already be subject to a perfected first priority security interest in favor of the Collateral Agent for the benefit of the Secured Parties, then each Loan Party shall, in each case at such Loan Party's expense:

(a) in connection with the formation or acquisition of a Subsidiary, within thirty (30) days after such formation or acquisition (or such longer period as the Collateral Agent may agree in its sole discretion), cause each such Subsidiary that is required to be a Guarantor pursuant to the Collateral and Guarantee Requirement, to duly execute and deliver to the Collateral Agent a guaranty or guaranty supplement, in form and substance reasonably satisfactory to the Collateral Agent, guaranteeing the other Loan Parties' Obligations under the Loan Documents;

(b) within thirty (30) days after (or such longer period as the Collateral Agent may agree in its sole discretion) such formation or acquisition, furnish to the Collateral Agent a description of the Material Owned Properties and material personal properties of such Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement or the Material Owned Property and personal properties so acquired, in each case in detail reasonably satisfactory to the Collateral Agent;

(c) within thirty (30) days after (or such longer period as the Collateral Agent may agree in its sole discretion) (i) acquisition of property by any Loan Party, duly execute and deliver, and cause each Loan Party to duly execute and deliver, to the Collateral Agent such additional pledges, assignments, Security Agreement Supplements, Securities Pledge Agreement Supplements, Intellectual Property Security Agreement Supplements and other security agreements (which, to the extent applicable and if relating to the type of Collateral the granting of a security interest in which can be effected through the execution of a joinder agreement or supplement to the Securities Pledge Agreement (a "*Securities Pledge Agreement Supplement*"), a joinder agreement or supplement to the Security Agreement (a "*Security Agreement Supplement*") or a joinder agreement or supplement to the Intellectual Property Security Agreement (an "*Intellectual Property Security Agreement Supplement*") shall be effected in such manner), as specified by, and in form and substance reasonably satisfactory to the Collateral Agent, in each case securing payment of all the Obligations of such Loan Party under the Loan Documents and granting Liens on all such properties and (ii) such formation or acquisition of any new Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement, duly execute and deliver and cause such Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement and each Loan Party acquiring Equity Interests in such Subsidiary to duly execute and deliver to the Collateral Agent pledges, assignments, Security Agreement Supplements, Intellectual Property Security Agreement Supplements and other security agreements (which, to the extent applicable and if relating to the type of Collateral the granting of a security interest in which can be effected through the execution of a Security Agreement Supplement or Intellectual Security Agreement Supplement shall be effected in such manner) as specified by, and in form and substance reasonably satisfactory to, the Collateral Agent, in each case securing payment of all of the Obligations of such Subsidiary or Loan Party, respectively, under the Loan Documents and granting Liens on all properties of such new Subsidiary;

(d) within thirty (30) days (or such longer period as the Collateral Agent may agree in its sole discretion) after such formation or acquisition, take, and cause each Loan Party and each newly acquired or newly formed Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement to take or cause to be taken, whatever action (including, without limitation, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) as may be necessary or advisable in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid, perfected (subject to the Collateral and Guarantee Requirement) Liens on the properties purported to be subject to the pledges, assignments, Security Agreement Supplements, Intellectual Property Security Agreement Supplements and security agreements delivered pursuant to this Section 6.11, enforceable against all third parties in accordance with their terms;

(e) within thirty (30) days (or such longer period as the Collateral Agent may agree in its sole discretion) after such formation or acquisition, deliver to the Collateral Agent, upon the request of the Collateral Agent in its sole discretion, a signed copy of a favorable opinion in customary form, addressed to the Collateral Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Collateral Agent addressing such matters as the Collateral Agent may reasonably request;

(f) at any time and from time to time, promptly execute and deliver, and cause each Loan Party and each newly acquired or newly formed Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement to execute and deliver, any and all further instruments and documents and take, and cause each Loan Party and each newly acquired or newly formed Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement to take, all such other action as the Collateral Agent may deem reasonably necessary or desirable to satisfy the Collateral and Guarantee Requirement in obtaining the full benefits of, or in perfecting and preserving the Liens granted pursuant to (as applicable), such guaranties, Mortgages, pledges, assignments, Security Agreement Supplements, Intellectual Property Security Agreement supplements and security agreements; and

(g) after the Closing Date, promptly within sixty (60) days after (x) the acquisition of any Material Owned Property by any Loan Party or (y) the formation or acquisition of any new direct or indirect Subsidiaries that owns any Material Owned Property, in each case if such Material Owned Property shall not already be subject to a perfected Lien pursuant to the Collateral and Guarantee Requirement, Borrower shall give notice thereof to the Administrative Agent and promptly thereafter shall cause such real property to be subjected to a Lien to the extent required by the Collateral and Guarantee Requirement, and otherwise satisfy the Collateral and Guarantee Requirement with respect to such real property, and will take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent or the Collateral Agent to grant and perfect or record such Lien.

Section 6.12 Use of Proceeds. The proceeds of the Term Loan shall be used to (i) repay the Existing Credit Facility and (ii) repay fees and expenses associated with the Transaction.

Section 6.13 Further Assurances. At any time or from time to time upon the request of Administrative Agent or Collateral Agent, each Loan Party will, at its expense:

(a) correct, and cause each of its Subsidiaries promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof;

(b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, Mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, collateral access agreements, assurances and other instruments as any Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iii) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so;

(c) use commercially reasonable efforts to cause any third parties to deliver or cause to be delivered such documents and instruments necessary to create, perfect and protect the security interests of the Secured Parties in the Collateral, subject to the express limitations of the Collateral and Guarantee Requirement; and

(d) use commercially reasonable efforts to obtain the applicable consents to security interests in assets in which the granting of a security interest is prohibited by applicable law or agreements containing anti-assignment clauses (it being understood that the Loan Parties shall not be required to commence litigation or expend any sums of money (except reasonable expenses in obtaining such consents) to obtain such consents).

Section 6.14 Taxes. (a) Pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, in each case on a timely basis, which, if unpaid when due and payable, may reasonably be expected to become a tax Lien upon any properties of the Loan Parties not otherwise permitted under this Agreement; *provided* that no Loan Party shall be required to pay any such Tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP unless and until any tax Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors.

(b) With respect to Parent, be classified as a corporation for United States federal income tax purposes.

Section 6.15 End of Fiscal Years; Fiscal Quarters. Cause (i) its Fiscal Year to end on or about December 31 of each calendar year and (ii) its Fiscal Quarters to end on or about March 31, June 30, September 30 and December 31 of each calendar year, in each case unless otherwise approved by the Administrative Agent.

Section 6.16 ERISA. Deliver to the Administrative Agent:

(a) *ERISA Events and ERISA Reports* (i) promptly and in any event within ten (10) days after any Loan Party, any Subsidiary or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a statement of a Responsible Officer of Borrower describing such ERISA Event and the action, if any, that such Loan Party, such Subsidiary or such ERISA Affiliate has taken and proposes to take with respect thereto and (ii) within ten (10) days of the date any records, documents or other information must be furnished to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information;

(b) *Plan Terminations.* Promptly and in any event within two (2) Business Days after receipt thereof by any Loan Party or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(c) *Plan Annual Reports.* Promptly and in any event within thirty (30) days after the filing thereof with the Internal Revenue Service, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Plan.

(d) *Multiemployer Plan Notices.* Promptly and in any event within five (5) Business Days after receipt thereof by any Loan Party, any Subsidiary or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (i) the imposition of Withdrawal Liability by any such Multiemployer Plan, (ii) the reorganization or termination, or a determination that such Multiemployer Plan is in endangered or critical status, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (iii) the amount of liability incurred, or that may be incurred, by such Loan Party, such Subsidiary or such ERISA Affiliate in connection with any event described in clause (i) or (ii).

Section 6.17 Board Observer Rights. Parent and its Subsidiaries shall permit the Administrative Agent on behalf of all of the Lenders (the “*Observer*”) to attend and observe (but not vote) at all meetings of Parent’s (or any Subsidiary’s, as applicable) board of directors or similar governing body (the “*Board*”) or any committee thereof (each a “*Committee*”), whether in person, by telephone or otherwise as requested by the Observer. Parent and such Subsidiaries shall notify the Observer in writing at the same time as furnished to members of the applicable Board or Committee of (i) the date and time for each general or special meeting of any such Board or Committee and (ii) the adoption of any resolutions or actions by any such Board or any such Committee by written consent (describing, in reasonable detail, the nature and substance of such action). Parent and each of its Subsidiaries shall concurrently deliver to the Observer all notices and any materials delivered to the official members of such Board or Committee in connection with a meeting or action to be taken by written consent, including a draft of any material resolutions or actions proposed to be adopted by written consent. Notwithstanding the foregoing, the Observer shall not be entitled to receive materials relating to, or be in attendance for any discussions relating to topics which (x) are subject to attorney client privilege, or (y) present a conflict of interest for the Observer. All such discussions and materials shall be subject to the confidentiality provisions set forth in Section 10.08. Borrower shall reimburse the Observer for all reasonable out-of-pocket costs and expenses incurred in connection with its participation in any such meeting.

Section 6.18 Post-Closing Obligations. Within the time periods specified on Schedule 6.18 (as each may be extended by the Administrative Agent in its reasonable discretion), complete such undertakings as are set forth on Schedule 6.18.

Section 6.19 [Reserved].

Section 6.20 Fit Pay. To the extent Fit Pay has not been Disposed of pursuant to Section 7.05(g) and is still a Subsidiary of Parent after the date which is sixty (60) days after the Closing Date (“*Fit Pay Trigger Date*”), Borrower shall:

(a) cause Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay) to become a Guarantor and deliver each of the agreements set forth in Section 6.11;

(b) from and after the Fit Pay Trigger Date until the Disposition of Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay), provide updates to the Agents on every Friday with respect to the status of the process to Dispose of Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay);

(c) within ten (10) days after the Fit Pay Trigger Date (i) retain a financial advisor acceptable to the Agents to assist with the Disposition of Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay) on terms and conditions satisfactory to the Agents and (ii) deliver to the Agents a fully executed copy of such engagement letter;

(d) within thirty (30) days after the Fit Pay Trigger Date, (i) enter into a letter of intent with a third party buyer with respect to the Disposition of Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay) and (ii) deliver the Agents a fully executed copy of such letter of intent;

(e) within sixty (60) days after the Fit Pay Trigger Date, deliver to the Agents draft purchase and sale agreements with respect to the Disposition of Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay); and

(f) within ninety (90) days after the Fit Pay Trigger Date, consummate the Disposition of Fit Pay and prepay the Term Loan in accordance with Section 2.02(b)(ii) with the Net Cash Proceeds of such Disposition of Fit Pay (or any Subsidiary of Parent that has acquired the assets of Fit Pay); provided that the Administrative Agent shall have received satisfactory evidence that in connection with the Disposition of Fit Pay (i) all obligations of any Loan Party with respect to the Fit Pay Earnout, Fit Pay Merger Agreement, the Promissory Note and the Series C Designation have been assigned and transferred from such Loan Party to a Person that is not a Loan Party nor a Subsidiary of the Borrower and (ii) after the consummation of the assignments, amendments and transfers referred to in the preceding clause (i), the Loan Parties are no longer party to, or obligated with respect to, any of the Fit Pay Earnout, Fit Pay Merger Agreement, the Promissory Note and the Series C Designation.

(g) Notwithstanding the foregoing, if, on or before the Fit Pay Trigger Date, Fit Pay shall have received cash equity contributions in an amount equal to or greater than \$2,000,000, the time periods included in Sections 6.20(c), (d), (e) and (f) above shall be extended by forty-five (45) days from the date on which such cash equity contributions are received by Fit Pay; provided that, such cash equity contributions shall not be made to Fit Pay by Parent, Borrower or any other Loan Party.

Section 6.21 PERS. On or before January 1, 2020, Borrower shall identify in writing to the Administrative Agent a U.S.-based manufacturer of PERS and such Person shall have been engaged by Borrower and produced a commercial amount of PERS for Borrower, in each case acceptable to the Administrative Agent.

ARTICLE VII

NEGATIVE COVENANTS

So long as any Lender shall have any Term Loan Commitment hereunder, any portion of the Term Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, Borrower shall not, nor shall Borrower permit any Loan Party to, directly or indirectly:

Section 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues (including accounts receivable), whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01;

(c) Liens for taxes, assessments or governmental charges which are not overdue for a period of more than forty-five (45) days or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;

(d) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, suppliers, construction contractors or other like Liens arising in the ordinary course of business which secure amounts not overdue for a period of more than forty five (45) days or if more than forty five (45) days overdue, are unfiled (or if filed have been discharged or stayed) and no other action has been taken to enforce such Lien or which are being contested in good faith, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Loan Parties and (iii) Liens securing the financing of insurance premiums (to the extent such Liens extend to the unearned premiums for such insurance);

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, indemnity, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) easements, rights-of-way, covenants, conditions, restrictions, encroachments, and other survey defects protrusions and other similar encumbrances and minor title defects affecting real property which were not incurred in connection with Indebtedness and do not in any case materially and adversely interfere with the use of the property encumbered thereby for its intended purposes;

(h) Liens securing Indebtedness permitted under Section 7.03(c); *provided* that (i) such Liens attach concurrently with or within one hundred twenty (120) days after the acquisition, or the completion of the construction, repair, replacement or improvement (as applicable) of the property subject to such Liens, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, replacements thereof and additions and accessions to such property and the proceeds and the products thereof and customary security deposits, and (iii) with respect to Capital Leases, such Liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to such Capital Leases;

(i) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Loan Parties or any Subsidiary (so long as such Subsidiary remains a Subsidiary) to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Loan Parties or such Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Loan Parties in the ordinary course of business;

(j) Liens arising from precautionary Uniform Commercial Code financing statement filings regarding leases entered into by Borrower in the ordinary course of business;

(k) any zoning, land-use or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property; and

(l) the modification, replacement, renewal or extension of any Lien permitted by clause (b) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof; and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03.

Section 7.02 Investments. Make any Investments, except:

(a) Investments in cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made by Parent after the Closing Date in Borrower and any wholly-owned Guarantor Subsidiary (including, without limitation, with proceeds of issuances of the Equity Interests of Parent);

(c) intercompany loans to the extent permitted by Section 7.03(h);

(d) to the extent constituting Investments, Liens, Indebtedness, fundamental changes, Dispositions and Restricted Payments expressly permitted under Section 7.01, Section 7.03, Section 7.05 and Section 7.06, respectively; *provided, however*, that no Investments may be made solely pursuant to this Section 7.02(d); and

(e) Investments existing on the date hereof and disclosed on Schedule 7.02 and Investments consisting of any modification, replacement, renewal, reinvestment or extension of any such Investment existing on the date hereof; *provided* that the amount of any Investment permitted pursuant to this Section 7.02(e) is not increased from the amount of such Investment on the Closing Date.

Section 7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except the following, without duplication (which constitutes "Permitted Indebtedness"):

(a) Obligations of the Loan Parties under the Loan Documents;

(b) Surviving Indebtedness listed on Schedule 7.03, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; *provided*, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(c) Indebtedness with respect to Capital Leases and purchase money Indebtedness in an amount not to exceed \$100,000 in the aggregate at any time outstanding; *provided* that any such Indebtedness (x) in the case of additional Capital Leases or purchase money Indebtedness, shall be secured by the asset subject to such additional Capital Leases or acquired asset in connection with the incurrence of such Indebtedness, as the case may be, and (y) in the case of purchase money Indebtedness, shall constitute not less than 75% of the aggregate consideration paid with respect to such asset;

(d) Indebtedness in respect of Swap Contracts designed to hedge against interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(e) Indebtedness incurred by Borrower in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(f) Indebtedness incurred by Borrower in respect of accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for substantially in accordance with GAAP;

(g) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by Borrower in the ordinary course of business.

(h) Indebtedness of (i) Parent to any Guarantor Subsidiary, (ii) any Guarantor Subsidiary to any other Guarantor Subsidiary and (iii) any Guarantor Subsidiary to Parent; *provided*, (x) all such Indebtedness shall be evidenced by promissory notes and all such notes shall be subject to a first priority Lien pursuant to the Collateral Documents and (y) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to the Administrative Agent;

(i) prior to the Disposition of Fit Pay, Indebtedness consisting of the Fit Pay Earnout;

(j) unsecured subordinated Indebtedness; provided that, all such Indebtedness under this clause (j) shall be subject to one or more subordination agreements, each in form and substance satisfactory to the Collateral Agent.

Section 7.04 Fundamental Changes. Wind-up, liquidate or dissolve or merge, consolidate or amalgamate with or into another Person, including by means of a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except:

(a) Dispositions pursuant to Section 7.05; and

(b) any Guarantor Subsidiary may be merged with or into any other Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to any Guarantor Subsidiary.

Section 7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete, worn out or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of Borrower;

(b) Dispositions of inventory and immaterial assets in the ordinary course of business (including allowing any registrations or any applications for registration of any immaterial Intellectual Property to lapse or go abandoned in the ordinary course of business);

(c) Dispositions permitted by Section 7.02, Section 7.04, Section 7.06 and Section 7.13 and Liens permitted by Section 7.01;

(d) Dispositions in the ordinary course of business of cash and Cash Equivalents;

(e) Dispositions, the proceeds of which are less than \$100,000 in any Fiscal Year;

(f) Dispositions resulting from Casualty Events; *provided* that the Net Cash Proceeds thereof shall be applied in accordance with the requirements of Section 2.02(b)(iii); and

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, Disposition of Fit Pay; *provided* that (i) any such Disposition is the result of an arm's length transaction between sophisticated business people, ably represented by counsel and (ii) the Administrative Agent shall have received satisfactory evidence that in connection with the Disposition of Fit Pay (i) all obligations of any Loan Party with respect to the Fit Pay Earnout, Fit Pay Merger Agreement, the Promissory Note and the Series C Designation have been satisfied or assigned and transferred from such Loan Party to a Person that is not a Loan Party nor a Subsidiary of the Borrower and (ii) after the consummation of the assignments, amendments and transfers referred to in the preceding clause (i), the Loan Parties are no longer party to, or obligated with respect to, any of the Fit Pay Earnout, Fit Pay Merger Agreement, the Promissory Note and the Series C Designation.

Section 7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except:

(a) any Subsidiary may make Restricted Payments to Borrower;

(b) to the extent constituting Restricted Payments, the Loan Parties may enter into and consummate transactions expressly permitted by any provision of Section 7.02 or Section 7.08;

(c) Restricted Payments made by Borrower to Parent with the proceeds of Retained ECF; *provided* that at the time of such Restricted Payment and after giving effect thereto (i) no Event of Default shall have occurred and is continuing and (ii) Borrower is in pro forma compliance with the financial covenants set forth in Section 7.13; *provided, further*, that any such payments made pursuant to this Section 7.06(c) shall not in the aggregate exceed \$125,000 in any calendar month (or, if the Leverage Ratio as of the last day of the most recently ended calendar month of Borrower is less than 1.00 to 1.00, \$250,000 in a calendar month);

(d) distributions with respect to Parent's Equity Interests or any management incentive plan, in each case, payable solely in shares of its Qualified Equity Interests (or the equivalent thereof) and not payable in cash or Cash Equivalents; provided, so long as no Event of Default has occurred and is continuing or would result therefrom, distributions in cash solely to pay any cash tax liability associated with such non-cash distribution received in connection with any management incentive plan shall be permitted in aggregate amounts not to exceed such cash tax liability;

(e) the Parent's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;

(f) Fit Pay may make Restricted Payments to Parent; and

(g) prior to the Disposition of Fit Pay, cash payments made by Parent to the holders of Parent's Series C Non-Convertible Voting Preferred Stock to pay dividends in such amounts and at such times as is specified in the Series C Designation; *provided* that (1) at the time of such Restricted Payment and after giving effect thereto (i) no Event of Default shall have occurred and is continuing and (ii) Borrower is in pro forma compliance with the financial covenants set forth in Section 7.13 and (2) such Restricted Payment is made solely with the Net Cash Proceeds of an Excluded Equity Issuance.

Section 7.07 Change in Nature of Business. Except for the transactions contemplated by the Disposition of Fit Pay, engage in any line of business other than those lines of business conducted by the Loan Parties on the Closing Date.

Section 7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of Parent, whether or not in the ordinary course of business, other than:

(a) transactions on terms substantially as favorable to Parent or such Subsidiary as would be obtainable by Parent or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate;

(b) the Transaction, including entering into this Agreement and the Loan Documents, together with all agreements ancillary hereto or thereto;

(c) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of Parent and its Subsidiaries in the ordinary course of business; and

(d) Restricted Payments permitted under Section 7.06.

Section 7.09 Prepayments of Certain Indebtedness; Modifications of Certain Indebtedness and Material Agreements. Except in each case as otherwise expressly permitted by this Agreement:

(a) directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations and (ii) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 7.05;

(b) amend or permit any amendments to, or terminate or waive any provision of, any Material Agreement if such amendment, termination, or waiver would be adverse to the Lenders;

(c) amend or permit any amendments to the Promissory Note in any manner that is adverse to the Lenders (which shall include, without limitation, increases to the principal amount, increases to the interest rate thereof and shortening the timing for payments thereunder);

(d) directly or indirectly, voluntarily or involuntarily purchase, redeem, defease, pay or prepay any principal of, premium, if any, interest or other amount payable in respect of the Fit Pay Earnout on or prior to its scheduled maturity;

(e) except in connection with the Disposition of Fit Pay, amend or permit any amendments to the Fit Pay Merger Agreement that affect the Fit Pay Earnout in any manner that is adverse to the Lenders (which shall include, without limitation, increases to the Fit Pay Earnout and shortening the timing for payments thereunder); and

(f) prior to the Disposition of Fit Pay, amend or permit any amendments to the Series C Designation in any manner that is adverse to the Lenders (which shall include, without limitation, increases to the “Dividend Rate” as defined therein, increases to the “Stated Value” as defined therein, shortening the timing for payments of dividends thereunder, and any other amendments that have the effect of increasing the dividends or other amounts payable thereunder or accelerating the payment thereof).

Section 7.10 Negative Pledge. Except as provided herein, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Parent to (a) pay dividends or make any other distributions on any of such Subsidiary’s Equity Interests owned by Parent or any other Subsidiary of Parent, (b) repay or prepay any Indebtedness owed by such Subsidiary to Parent or any other Subsidiary of Parent, (c) make loans or advances to Borrower or any Subsidiary of Parent, or (d) transfer any of its property or assets to Borrower or any other Subsidiary of Parent other than restrictions (i) in agreements evidencing purchase money Indebtedness permitted by Section 7.03(c) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Equity Interests not otherwise prohibited under this Agreement.

Section 7.11 Amendments to Constitutive Documents. Amend, or permit any of its Subsidiaries to amend its certificate of incorporation or bylaws or other constitutive documents, in a manner adverse to the interests of the Lenders; *provided* that no such amendment shall provide for any plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law).

Section 7.12 Sale Leasebacks. Permit or permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Loan Party to any Person in connection with such lease.

Section 7.13 Financial Covenants.

(a) *Fixed Charge Coverage Ratio.* Borrower shall not permit the Fixed Charge Coverage Ratio as of the last day of any calendar month, beginning with April 30, 2019, to be less than or equal to the correlative ratio indicated:

| CALENDAR MONTHS | FIXED CHARGE COVERAGE RATIO |
|---|--------------------------------|
| Each calendar month ending April 30, 2019 through March 31, 2021 | 1.10:1.00 |
| Each calendar month ending April 30, 2021 and each calendar month ending thereafter | 1.25:1.00 |

(b) *Leverage Ratio*. Borrower shall not permit the Leverage Ratio as of the last day of any calendar month, beginning with June 30, 2019, to exceed the correlative ratio indicated:

| CALENDAR MONTH | LEVERAGE RATIO |
|--|-------------------|
| Each calendar month ending April 30, 2019 through January 31, 2020 | 2.75:1.00 |
| Each calendar month ending February 29, 2020 through May 31, 2020 | 2.50:1.00 |
| Each calendar month ending June 30, 2020 through September 30, 2020 | 2.25:1.00 |
| Each calendar month ending October 31, 2020 through December 31, 2020 | 2.00:1.00 |
| Each calendar month ending January 31, 2021 through April 30, 2021 | 1.75:1.00 |
| The calendar months ending May 31, 2021 and June 30, 2021 | 1.65:1.00 |
| The calendar months ending July 31, 2021 and August 31, 2021 | 1.50:1.00 |
| Each calendar month ending September 30, 2021 through February 28, 2022 | 1.25:1.00 |
| The calendar month ending March 31, 2022 and each calendar month ending thereafter | 1.00:1.00 |

(c) *Certain Calculations.* With respect to any period during which a Disposition has occurred, for purposes of determining compliance with the financial covenants set forth in this Section 7.13, Consolidated Adjusted EBITDA and the components of Consolidated Fixed Charges shall be calculated with respect to such period on a pro forma basis (including pro forma adjustments approved by Administrative Agent in its reasonable discretion) using the historical audited financial statements of any business sold or to be sold and the consolidated financial statements of Parent and its Subsidiaries which shall be reformulated as if such Disposition, and any Indebtedness repaid in connection therewith, had been consummated or repaid at the beginning of such period.

(d) *Liquidity.* (i) Prior to the Disposition of Fit Pay, Borrower shall not permit Qualified Cash beginning with (A) April 30, 2019 through March 31, 2021, to be less than \$750,000 at all times and (B) April 30, 2021 and thereafter, to be less than \$1,000,000 at all times and (ii) on and after the Disposition of Fit Pay, Borrower shall not permit Qualified Cash as of the last day of any calendar month, beginning with (A) April 30 2019 through March 31, 2021, to be less than \$750,000 and (B) April 30, 2021 and thereafter, to be less than \$1,000,000.

(e) *VAMC Sales.* As of the last day of any Fiscal Quarter beginning with June 30, 2019, Borrower shall not permit total sales of the Loan Parties to VAMC during the Fiscal Quarter most recently ended to be more than 25% less than the total sales of the Loan Parties to VAMC during the corresponding Fiscal Quarter in the immediately preceding Fiscal Year as of the last day of such Fiscal Quarter.

Section 7.14 Activities of Parent. Parent shall not engage in any business activities and shall not own any property other than (a) ownership of 100% of the Equity Interests of its Subsidiaries, (b) activities and contractual rights incidental to maintenance of its corporate existence and ownership of the Equity Interests of its Subsidiaries, and (c) the performance of its obligations under (i) the Loan Documents to which it is a party, (ii) its Organization Documents, and (iii) customary indemnification agreements with directors and officers of Parent entered into in the ordinary course of business.

Section 7.15 Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP or (b) Fiscal Year.

Section 7.16 OFAC. (a) Become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) engage in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner that violates Section 2 of such executive order or (c) become a person on the list of “Specially Designated Nationals and Blocked Persons” or subject to blocking or specific trade restrictions under any other U.S. Department of Treasury’s Office of Foreign Assets Control regulation or implementing executive order.

Section 7.17 Officer Compensation. Pay cash compensation in any Fiscal Year (a) to the chief executive officer of Borrower, in an aggregate amount greater than \$420,000, (b) to the chief financial officer of Borrower, in an aggregate amount greater than \$300,000 and (c) to the chief technology officer of Borrower, in an aggregate amount greater than \$305,000.

Section 7.18 Deposit Accounts and Securities Accounts. Except as expressly permitted pursuant to a Security Agreement, no Loan Party shall establish or maintain a deposit account or a securities account that is not subject to a Control Agreement (as defined in the Security Agreement).

Section 7.19 Kathy Neighbors. Without the prior written consent of the Administrative Agent, Borrower shall not (i) terminate the employment of Kathy Neighbors nor (ii) permit Kathy Neighbors to cease to be a contractor or employee of Borrower unless a successor reasonably acceptable to the Collateral Agent is appointed on terms reasonably acceptable to the Collateral Agent within 60 days of such cessation of being a contractor or employee of Borrower.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Any of the following events referred to in any of clauses (a) through (n) inclusive of this Section 8.01 shall constitute an “Event of Default”:

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of the Term Loan (including, for the avoidance of doubt, any mandatory prepayment under Section 2.02(b)) or (ii) within three (3) Business Days after the same becomes due, any interest on Term Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants*. Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, Section 6.02, Section 6.03, Section 6.05, Section 6.06, Section 6.07, Section 6.08, Section 6.10, Section 6.11, Section 6.12, Section 6.14, Section 6.16, Section 6.17, Section 6.18, Section 6.20, Section 6.21 or Article VII; *provided, however*, that Borrower's failure to observe any term, covenant or agreement contained in Section 6.02(a), (b) or (e), Section 6.03(d), (e), (f), (g), (h), (j), (n) or (o), or in Section 6.16 shall not be an Event of Default under this Section 8.01(b) if such failure is cured within five (5) Business Days following the occurrence of such event; or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by Borrower of written notice thereof by the Administrative Agent or the Required Lenders; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default*. Any Loan Party or any Subsidiary (i) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount of not less than the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; or

(f) *Involuntary Bankruptcy; Appointment of Receiver; etc.* (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Loan Party in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Loan Party under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Loan Party, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Loan Party for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Loan Party, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) *Voluntary Bankruptcy; Appointment of Receiver, etc.* (i) Any Loan Party shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Loan Party shall make any assignment for the benefit of creditors; or (ii) any Loan Party shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Loan Party (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.01(f); or

(h) *Judgments and Attachments.* Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$100,000 or (ii) in the aggregate at any time an amount in excess of \$250,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against any Loan Party or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder); or

(i) *Dissolution.* Any order, judgment or decree shall be entered against any Loan Party decreeing the dissolution or split up of such Loan Party and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(j) *ERISA.* (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party under Title IV of ERISA in an aggregate amount which would reasonably be expected to exceed the Threshold Amount, (ii) any Loan Party, Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which would reasonably be expected to exceed the Threshold Amount, or (iii) any Loan Party, Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, and as a result of such reorganization or termination the aggregate annual contributions of the Loan Parties, the Subsidiaries and the ERISA Affiliates to all Multiemployer Plans that are then in reorganization or being terminated have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization or termination occurs by an aggregate amount which would reasonably be expected to exceed the Threshold Amount; or

(k) *Invalidity of Loan Documents.* (i) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the satisfaction in full of all the Obligations, ceases to be in full force and effect; (ii) any Loan Party contests in any manner the validity or enforceability of any provision of any Loan Document; or (iii) any Loan Party denies that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), purports to revoke or rescind any Loan Document or asserts that any Guarantee, Collateral Document or subordination provision in respect of any Indebtedness in excess (in the aggregate) of the Threshold Amount is invalid or unenforceable; or

(l) *Change of Control.* There occurs any Change of Control; or

(m) *Guaranties, Collateral Documents and other Loan Documents.* At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party; or

(n) *Proceedings.* The indictment of any Loan Party or any of its Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party or any of its Subsidiaries pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of such Person; or

(o) *Cessation of Business.* Except as contemplated by the Disposition of Fit Pay, (i) any Loan Party or any of its Subsidiaries is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of its business for more than 15 days; (ii) any other cessation of a substantial part of the business of Parent or any of its Subsidiaries for a period which materially and adversely affects Parent or any of its Subsidiaries; or (iii) any material damage to, or loss, theft or destruction of, any Collateral whether or not insured or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 15 consecutive days, the cessation or substantial curtailment of revenue producing activities at a facility.

Section 8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the unpaid principal amount of the outstanding Term Loan, all interest accrued and unpaid thereon, and all other amounts, which, for the avoidance of doubt, shall include the Prepayment Premium (if any) owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower;

(b) set-off against any outstanding Obligations amounts held for the account of the Loan Parties as cash collateral or in the accounts of any Loan Party maintained by or with the Administrative Agent, any Lender or their respective Affiliates; and

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an Event of Default under Section 8.01(f) or (g), the unpaid principal amount of the outstanding Term Loan and all interest and other amounts as aforesaid, which, for the avoidance of doubt, shall include the Prepayment Premium (if any), shall automatically become due and payable without further act of any Agent or any Lender.

Section 8.03 Application of Funds. If after the exercise of remedies provided for in Section 8.02 (or after the Term Loan has automatically become immediately due and payable), including in any bankruptcy or insolvency proceeding, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and Section 10.05 and amounts payable under Article III) payable to each Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting indemnities and other amounts (other than principal and interest) payable to the Lenders (including amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued, unpaid interest (including, but not limited to, Default Rate interest and post-petition interest) and the Prepayment Premium (if any), ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to prepay the Term Loan on a pro rata basis (in accordance with the respective outstanding principal amounts thereof);

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Section 8.04 Other Amounts Due. In the event of repayment of the Obligations at any time prior to the Maturity Date, for any reason, including (i) upon acceleration after the occurrence and during the continuance of an Event of Default, (ii) foreclosure and sale of the Collateral, (iii) sale of the Collateral in any insolvency proceeding or (iv) pursuant to any restructuring, reorganization or compromise of the Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure or arrangement in any insolvency proceeding, then in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Administrative Agent and the Lenders or profits lost by the Administrative Agent and the Lenders as a result of such early termination, and by mutual agreement of the parties as to a reasonable estimate and calculation of the lost profits or damages of the Administrative Agent and the Lenders, the full amount of the Prepayment Premium (if any) shall be due and payable upon such date. In the event of an acceleration of the Obligations under this Agreement whether pursuant to the actions of the Required Lenders or automatically, then, without any further action by the Lenders or the Administrative Agent, there shall be an amount due and payable to the Lenders equal to the applicable Prepayment Premium (if any) that would have been payable pursuant to Sections 2.02(c) hereof as if the Obligations were voluntarily repaid on such date of acceleration.

Section 8.05 Cure Right. In the event that Borrower fails to comply with the requirements of any financial covenant set forth in Section 7.13(a) or Section 7.13(b), until the expiration of the 10th day after the date on which financial statements are required to be delivered with respect to the applicable calendar month hereunder, Parent shall have the right to issue Permitted Cure Equity for cash or otherwise receive cash contributions to the capital of the Parent, and, in each case, to contribute any such cash to the capital of Borrower, and apply the amount of the proceeds thereof to prepay the Term Loan with respect to such applicable calendar month (the "Cure Right"); provided that (a) such proceeds are actually received by Borrower no later than 10 days after the date on which financial statements are required to be delivered with respect to such calendar month hereunder, (b) such proceeds do not exceed the aggregate amount necessary to cure such Event of Default under Section 7.13(a) and Section 7.13(b) for such period, (c) the Cure Right shall not be exercised more than (i) two times during any year and (ii) four times during the term of this Agreement, (d) the Cure Right shall not be exercised in consecutive months, (e) such proceeds shall not increase Consolidated Adjusted EBITDA and (f) such proceeds shall be applied to prepay the Term Loan in accordance with Section 2.02(b)(v). If, after giving effect to the foregoing pro forma adjustment to Consolidated Total Debt for such repayment of the Term Loan, Borrower is in compliance with the financial covenants set forth in Section 7.13(a) and Section 7.13(b), Borrower shall be deemed to have satisfied the requirements of such Sections as of the relevant date of determination with the same effect as though there had been no failure to comply on such date, and the applicable breach or default of such Section 7.13(a) and Section 7.13(b) that had occurred shall be deemed cured for purposes of this Agreement. The parties hereby acknowledge that this Section 8.05 may not be relied on for purposes of calculating any financial ratios other than as applicable to Section 7.13(a) and Section 7.13(b) and shall not result in any adjustment to any amounts other than the amount of the Consolidated Total Debt referred to in the immediately preceding sentence.

ARTICLE IX

ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authorization of Agents. (a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained in this Agreement or in any other Loan Document, the Administrative Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Notwithstanding any provision contained in this Agreement providing for any action in the Administrative Agent’s reasonable discretion or approval of any action or matter in the Administrative Agent’s reasonable satisfaction, the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law. The Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower, any other Loan Party or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any other Agent-Related Person in any capacity.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest, charge or other Lien created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

Section 9.02 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through Affiliates, agents, employees or attorneys-in-fact, such sub-agents as shall be deemed necessary by the Administrative Agent, and shall be entitled to advice of counsel, both internal and external, and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

Section 9.03 Liability of Agents. No Agent-Related Person shall (a) be liable to any Lender for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or Participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

Section 9.04 Reliance by Agents. (a) Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Closing Date specifying its objection thereto.

Section 9.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default". The Administrative Agent will promptly notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article VIII; *provided* that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06 Credit Decision; Disclosure of Information by Agents. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

Section 9.07 Indemnification of Agents. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities to the extent incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction; *provided* that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of Borrower; *provided* that such reimbursement by the Lenders shall not affect Borrower's continuing reimbursement obligations with respect thereto, if any. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

Section 9.08 Agents in their Individual Capacities. Each Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though such Agent were not an Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, each Agent or its Affiliates may receive information regarding any Loan Party or any Affiliate of a Loan Party (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them. With respect to its portion of the Term Loan, each Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not an Agent, and the terms “Lender” and “Lenders” include such Agent in its individual capacity.

Section 9.09 Successor Agents. The Administrative Agent may resign as the Administrative Agent upon thirty (30) days’ notice to the Lenders and Borrower. If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint a successor agent for the Lenders, which appointment of a successor agent shall require the consent of Borrower at all times other than during the existence of an Event of Default (which consent of Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and, if no Default has occurred and is continuing, Borrower, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term “Administrative Agent”, shall mean such successor administrative agent and/or supplemental administrative agent, as the case may be, and the retiring Administrative Agent’s appointment, powers and duties as the Administrative Agent shall be terminated. After the retiring Administrative Agent’s resignation hereunder as the Administrative Agent, the provisions of this Article IX and Section 10.04 and Section 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent by the date which is thirty (30) days following the retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Lenders assuming the role of Administrative Agent as specified in the immediately preceding sentence shall assume the rights and obligations of the Administrative Agent (including the indemnification provisions set forth in Section 9.07) as if each such Lender were the Administrative Agent. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may reasonably request, in order to (a) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (b) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, the successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents.

Section 9.10 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of the Term 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 Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loan 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 Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 2.04, Section 10.04 and Section 10.05 or otherwise hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due to the Administrative Agent under Section 2.04, Section 10.04 and Section 10.05 or otherwise hereunder.

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, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11 Release of Collateral and Guaranty. The Lenders irrevocably agree, authorize and direct the Administrative Agent and Collateral Agent:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full in cash of all Obligations (other than (A) contingent indemnification obligations not yet accrued and payable and (B) any other obligation (including a guarantee) that is contingent in nature) (the date upon which the conditions in this Section 9.11(a) (i) shall have been satisfied, the "*Termination Date*"), (ii) upon any permitted sale, lease, transfer or other disposition of any item of Collateral of any Loan Party (including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of the Loan Party that owns such Collateral) in accordance with the terms of the Loan Documents, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (b) below;

(b) to release any Guarantor from its obligations under the Guaranty upon (i) in the case of any Subsidiary, such Person ceasing to be subject to the Collateral and Guarantee Requirement and Section 6.11 as a result of a transaction permitted hereunder (as certified by a Responsible Officer) and Borrower notifying the Administrative Agent in writing that it wishes such Guarantor to be released from its obligations under the Guaranty or (ii) the Termination Date; and

(c) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.01(h) and (i).

The Collateral Agent will, at Borrower's expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of Collateral pursuant to this Section 9.11 from the assignment and security interest granted under the Collateral Documents (or the release of the Guarantor from its Guarantee of the Obligations) in accordance with the terms of the Loan Documents (*provided* that Borrower shall have delivered to the Collateral Agent a certificate of a Responsible Officer certifying that such transaction has been consummated in compliance with the Loan Documents). Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property in accordance with this Section 9.11.

ARTICLE X

MISCELLANEOUS

Section 10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders and Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however,* that:

(a) no amendment, waiver or consent shall, unless in writing and signed by all of the Lenders, do any of the following at any time:

(i) change the number of Lenders or the percentage of (x) the Term Loan Commitments or (y) the aggregate unpaid principal amount of the Term Loan that, in each case, shall be required for the Lenders or any of them to take any action hereunder (including pursuant to any change to the definition of "Required Lenders"),

(ii) release one or more Guarantors (or otherwise limit such Guarantors' liability with respect to the Obligations owing to the Agents and the Lenders under the Guaranties) if such release or limitation is in respect of all or substantially all of the value represented by the Guaranties to the Lenders,

(iii) release, or subordinate the Administrative Agent's Liens in, all or substantially all of the Collateral in any transaction or series of related transactions (other than in connection with any sale of Collateral permitted herein), or

(iv) amend any provision of this Section 10.01;

(b) no amendment, waiver or consent shall, unless in writing and signed by each Lender specified below for such amendment, waiver or consent:

(i) increase the Term Loan Commitments of a Lender without the consent of such Lender;

(ii) reduce the principal of, or stated rate of interest on, or stated premium payable on, the portion of the Term Loan owed to a Lender or any fees or other amounts stated to be payable hereunder or under the other Loan Documents to such Lender without the consent of such Lender; *provided* if the Required Lenders agree to waive any Event of Default and such waiver is effective in accordance with this Section 10.01 or if the Required Lenders agree to change any financial definitions that would reduce the stated rate of interest or any fees or other non-principal amounts stated to be payable hereunder or under the other Loan Documents pursuant to any amendment, waiver or consent not being effected in order to reduce the stated rate of interest or such fees or other amounts, then only the consent of the Required Lenders shall be necessary to waive any obligation of Borrower to pay interest at the Default Rate in connection with such waived Event of Default or reduce the stated rate of interest or such fees in connection with such amendment, waiver or consent described in this proviso to clause (b)(ii), as applicable;

(iii) postpone any date scheduled for any payment of principal of, or interest on, the Term Loan, any date scheduled for payment or for any date fixed for any payment of fees hereunder in each case payable to a Lender without the consent of such Lender;

(iv) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Document;

(v) change the order of application or any prepayment of the Term Loan from the application thereof set forth in the applicable provisions of Section 2.02(d) or Section 8.03 in any manner that adversely affects the Lenders under the Facility without the consent of holders of a majority of the Term Loan Commitments or the Term Loan outstanding under the Facility or otherwise change any provision requiring the pro rata distributions hereunder among the Lenders without all Lenders' consent;

(vi) amend the definition of "Required Lenders" or "Pro Rata Share"; provided, with the consent of Administrative Agent and the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Required Lenders" or "Pro Rata Share"; or

(vii) modify Section 2.09 without the consent of each Lender directly and adversely affected thereby;

provided further that no amendment, waiver or consent shall, unless in writing and signed by an Agent in addition to the Lenders required above to take such action, affect the rights or duties of such Agent under this Agreement or the other Loan Documents.

Notwithstanding anything to the contrary contained in this Section 10.01, this Agreement and any other Loan Document may be amended, supplemented and waived with the consent of the Administrative Agent and Borrower without the need to obtain the consent of any other Lender if such amendment, supplement or waiver is delivered in order to (i) cure ambiguities, omissions, mistakes or defects or (ii) to cause any Collateral Document to be consistent with this Agreement and the other Loan Documents.

Section 10.02 Notices and Other Communications.

(a) *General.* Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing delivered by electronic transmission (except as to service of process, which shall be delivered only in writing and in accordance with applicable law). All such notices shall be delivered to the applicable electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower or the Administrative Agent, to the electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other electronic mail address or telephone number as shall be designated by such party in a notice to the other parties from time to time; and

(ii) if to any other Lender, to the electronic mail address or telephone number specified on Schedule 10.02 or to such other electronic mail address or telephone number as shall be designated by such party in a written notice to Borrower and the Administrative 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) if delivered by electronic mail, when delivered; *provided* that notices and other communications to Borrower and the Administrative Agent pursuant to Article II shall not be effective until actually received by such Person during the Person's normal business hours. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) *Effectiveness of Electronically Transmitted Documents and Signatures.* Loan Documents may be transmitted and/or signed by electronic transmission (including a .pdf or .tif copy).

(c) *Reliance by Agents and Lenders.* The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Loan Party in the absence of gross negligence or willful misconduct by such Agent-Related Person or such Lender. All telephonic notices to the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(d) *Notice to other Loan Parties.* Borrower agrees that notices to be given to any other Loan Party under this Agreement or any other Loan Document may be given to Borrower in accordance with the provisions of this Section 10.02 with the same effect as if given to such other Loan Party in accordance with the terms hereunder or thereunder.

(e) Borrower hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Loan Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (ii) provides notice of any Default or Event of Default under this Agreement or (iii) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or the Credit Extension hereunder (all such non-excluded communications being referred to herein collectively as "*Communications*"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Administrative Agent to an electronic mail address specified by the Administrative Agent to Borrower. In addition, Borrower agrees to continue to provide the Communications to the Administrative Agent in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

(f) The Administrative Agent agrees that the receipt in accordance with Section 10.02 of the Communications by the Administrative Agent at its e-mail address set forth on Schedule 10.02 shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees (i) to notify the Administrative Agent 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 (ii) that the foregoing notice may be sent to such e-mail address. Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04 Costs and Expenses. Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to pay promptly (a) all the Administrative Agent's actual, documented, and reasonable costs and expenses of preparation of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (b) all the reasonable and documented fees, expenses and disbursements of counsel to Agents in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (c) all the actual and documented reasonable costs and expenses of creating and perfecting Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Required Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (d) all the Administrative Agent's actual costs and reasonable fees, expenses for, and disbursements of any of Administrative Agent's, auditors, accountants, consultants or appraisers whether internal or external, and all reasonable attorneys' fees (including expenses and disbursements of outside counsel) incurred by Administrative Agent; (e) all the actual and documented reasonable costs and expenses (including the reasonable and documented fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (f) all other actual, documented, and reasonable costs and expenses incurred by each Agent in connection with the negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (g) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings.

Section 10.05 Indemnification by Borrower. (a) Whether or not the transactions contemplated hereby are consummated, Borrower shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, trustees, investment advisors and attorneys-in-fact (collectively the “*Indemnitees*”) from and against any and all liabilities, obligations, losses, taxes, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including counsel to the Administrative Agent and the Lenders, and to the extent reasonably necessary, local counsel in any relevant jurisdiction (and, in the event of any actual conflict of interest, additional counsel to the affected parties)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Term Loan Commitment or the Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on, at, under or from any property currently or formerly owned or operated by any Loan Party, or any Environmental Liability related to any Loan Party or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (any of the foregoing described in this clause (iv), a “*Proceeding*”) (all the foregoing described in clauses (i) to (iv), collectively, the “*Indemnified Liabilities*”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee and whether brought by an Indemnitee, a third party or by any Loan Party or any Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereby are consummated; *provided* that such indemnity shall not, as to any Indemnitees, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction, and except to the extent resulting from claims between or among any Lenders in their capacity as such. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through any information transmission systems in connection with this Agreement, nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document. All amounts due in respect of costs, expenses and disbursements under this Section 10.05 shall be paid within ten (10) Business Days after demand therefor; *provided*, that each Indemnitee receiving any such reimbursement shall repay such amounts to the relevant Loan Party in the event that such Indemnitee shall not be entitled thereto pursuant to the provisions hereof. The agreements in this Section 10.05 shall survive the resignation of any Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

(b) Borrower shall not be liable for any settlement of any Proceedings effected without its consent (which consent shall not be unreasonably withheld or delayed), but if settled with Borrower’s consent or if there is a final judgment for the plaintiff in such Proceedings, Borrower shall indemnify and hold harmless each Indemnitee from and against any Indemnified Liabilities in accordance with the foregoing clause (a). Borrower shall not, without the prior written consent of an Indemnitee (which consent shall not be unreasonably withheld or delayed), effect any settlement or consent to the entry of any judgment of any pending or threatened Proceedings in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee in form and substance satisfactory to such Indemnitee from all liability on claims that are the subject matter of such Proceedings, (ii) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnitee and (iii) contains customary confidentiality and non-disparagement provisions.

(c) In the event that an Indemnitee is requested or required to appear as a witness in any action brought by or on behalf of or against Borrower or any of its Subsidiaries or Affiliates in which such Indemnitee is not named as a defendant, Borrower shall reimburse such Indemnitee for all reasonable expenses incurred by it in connection with such Indemnitee's appearing and preparing to appear as such a witness, including without limitation, the reasonable fees and expenses of its legal counsel.

Section 10.06 Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate.

Section 10.07 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under the other Loan Documents without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the requirements of Section 10.07(b), (ii) by way of participation in accordance with the provisions of Section 10.07(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f) or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) 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 Term Loan Commitment(s) and the Term Loan); *provided* that:

(i) (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Term Loan Commitment and the Term Loan at the time owing to it, no minimum amount shall need be assigned, and (B) in any case not described in clause (b)(i)(A) of this Section, the aggregate amount of the Term Loan Commitment (which for this purpose includes the Term Loan outstanding thereunder) or, if the applicable Term Loan Commitment is not then in effect, the outstanding principal balance of the portion of the Term Loan held by the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent, shall not be less than \$1,000,000 unless the Administrative Agent otherwise consents (each such consent not to be unreasonably withheld or delayed) except such consent by the Administrative Agent shall not be required if such assignment is to an Affiliate of a Lender or an Approved Fund;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loan or the Term Loan Commitment assigned;

(iii) no consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for any assignment unless such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund related thereto; and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually).

From and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be party to this Agreement as a Lender with respect to the interest assigned and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement in addition to any rights and obligations otherwise held by such assignee as a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.02, 3.04, 3.05 (or any other increased costs protection provision), 10.04 and 10.05). Upon request, and the surrender by the assigning Lender of its Note (if any), Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (b) shall not be an effective assignment hereunder.

(c) Each Lender, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices a register for the recordation of the name and address of any assignee of any Lender and the outstanding principal amount (and stated interest) of the Term Loan owing thereto (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and Borrower shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding anything herein to the contrary, any assignment of the Term Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

(d) Any Lender may at any time, without the consent of, or notice to, Borrower or the Administrative Agent, sell participations to any Person (other than (x) a natural person and (y) Borrower or any of its Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Term Loan Commitment and/or the Term Loan owing to it); *provided that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 10.01(a), or Section 10.01(b) that directly affects such Participant. Subject to Section 10.07(e), Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01, including Section 3.01(e) and Section 3.01(f)), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(b). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided that* such Participant agrees to be subject to Section 2.09 as though it were a Lender. Any Lender that sells participations shall maintain a register meeting the requirements of Treasury Regulation Section 5f.103-1(c) (or any successor regulation), on which it enters the name and the address of each Participant and the principal amounts of each Participant's participation interest in the Term Loan Commitments and/or Term Loan (or other rights or obligations) held by it (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 interest as the owner thereof for all purposes notwithstanding any notice to the contrary. In maintaining the Participant Register, such Lender shall be acting as the agent of Borrower solely for purposes of Treasury Regulation Section 5f.103-1(c) and undertakes no other duty, responsibility or obligation to Borrower (including, without limitation, in no event shall such Lender be considered a fiduciary of Borrower for any purpose). In addition to maintaining the Participant Register, such Lender shall, upon request, show the Participant Register to Borrower.

(e) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 and 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or central bank having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "*Granting Lender*") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and Borrower (an "*SPC*") the option to provide all or any part of the Term Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund the Term Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of the Term Loan, the Granting Lender shall be obligated to make its Term Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable and such liability shall remain with the Granting Lender, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Term Loan by an SPC hereunder shall utilize the Term Loan Commitment of the Granting Lender to the same extent, and as if, such Term Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of Borrower and the Administrative Agent, assign all or any portion of its right to receive payment with respect to the Term Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of the Term Loan to any rating agency, commercial paper dealer or provider of any surety or Guarantee Obligation or credit or liquidity enhancement to such SPC.

(h) Notwithstanding anything to the contrary contained herein, (i) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Term Loan owing to it and the Note, if any, held by it and (ii) any Lender that is a Fund may create a security interest in all or any portion of the Term Loan owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

Section 10.08 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information and to not use or disclose such information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' directors, investors, partners, officers, employees, trustees, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or examiner regulating any Lender; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) to any pledgee referred to in Section 10.07(f) or Section 10.07(h), Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (f) with the written consent of Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 by the disclosing party; (h) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender); (i) to the extent not known by it to consist of non-public information, (j) for purposes of establishing a "due diligence" defense or (k) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Term Loan Commitments, and the Credit Extension. For the purposes of this Section 10.08, "*Information*" means all information received from any Loan Party or its Affiliates or its Affiliates' directors, officers, employees, trustees, investment advisors or agents, relating to the Loan Parties or their business, other than any such information that is publicly available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08, including, without limitation, information delivered pursuant to Section 6.01, 6.02 or 6.03 hereof. Notwithstanding the foregoing, on or after the Closing Date, any Agent or Lender may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Loan Parties) (collectively, "Trade Announcements"). No Loan Party shall issue any Trade Announcement or disclose the name of any Agent or any Lender except (A) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (B) with the prior approval of Administrative Agent and such Lender.

Section 10.09 Setoff. In addition to any rights and remedies of the Agents and the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates and each Agent and its Affiliates is authorized at any time and from time to time, without prior notice to the Loan Parties, any such notice being waived by the Loan Parties to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or such Agent and its Affiliates, as the case may be, to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or such Agent and its Affiliates hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate thereof shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender and Agent agrees promptly to notify Borrower and the Administrative Agent after any such set off and application made by such Lender or Agent, as the case may be; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Agent and each under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that such Agent and such Lender may have.

Section 10.10 Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by electronic transmission (including a .pdf or .tif copy) of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document.

Section 10.11 Integration. This Agreement comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict or inconsistency between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict or inconsistency with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.12 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any portion of the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.13 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.14 Governing Law. (a) This Agreement and each other loan document shall be governed by, and construed in accordance with, the law of the state of New York (except, with respect to any other loan document, as otherwise expressly provided therein).

(b) Any legal action or proceeding arising under any loan document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any loan document, or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, shall be brought in the courts of the state of New York sitting in New York County or of the United States for the southern district of such state, and by execution and delivery of this agreement, Borrower, each Agent and each Lender consents, for itself and in respect of its property, to the exclusive jurisdiction of those courts. Borrower, each Agent and each Lender irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of any loan document or other document related thereto.

Section 10.15 Waiver of Right To Trial By Jury. Each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any loan document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any loan document, or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether founded in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this Section 10.15 with any court as written evidence of the consent of the signatories hereto to the waiver of their right to trial by jury.

Section 10.16 Binding Effect. This Agreement shall become effective when it shall have been executed by Borrower, the Administrative Agent and the Collateral Agent, and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of Borrower, each such Agent and each Lender and their respective successors and assigns, except that Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

Section 10.17 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provisions of this Section 10.17 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.18 PATRIOT Act. Each Lender hereby notifies Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the PATRIOT Act. Borrower agrees to provide, and to cause each other Loan Party to provide, such information promptly upon request.

Section 10.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Borrower acknowledges and agrees, and acknowledges and agrees that it has informed its Subsidiaries, that: (i) (A) no fiduciary, advisory or agency relationship between Borrower and its Subsidiaries and any Agent or any Lender is intended to be or has been created in respect of any of the transactions contemplated hereby and by the other Loan Documents, irrespective of whether any Agent or any Lender has advised or is advising Borrower and its Subsidiaries on other matters, (B) the arranging and other services regarding this Agreement provided by the Agents and the Lenders are arm's-length commercial transactions between Borrower and its Subsidiaries, on the one hand, and the Agents and the Lenders, on the other hand, (C) Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (D) Borrower is capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agents and the Lenders each is and has been acting solely as a principal and, except as may otherwise be expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower and its Subsidiaries or any of their Affiliates, or any other Person and (B) no Agent or Lender has any obligation to Borrower and its Subsidiaries or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Subsidiaries and its Affiliates, and no Agent or Lender has any obligation to disclose any of such interests and transactions to Borrower and its Subsidiaries or any of its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that they may have against the Agents and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LOGICMARK, LLC,

as Borrower

By: _____
Name: _____
Title: _____

[Signature page to Senior Secured Credit Agreement]

████████████████████

as Administrative Agent and Collateral Agent

By: _____

Name: _____

Title: _____

[Signature page to Senior Secured Credit Agreement]

LENDER:



By: _____

Name: _____

Title: _____

[Signature page to Senior Secured Credit Agreement]

SECURITY AGREEMENT

By

[REDACTED]

and

THE OTHER GRANTORS PARTY HERETO,
as Grantors,

and

[REDACTED]

as Collateral Agent

Dated as of May 3, 2019

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SECURITY AGREEMENT

This SECURITY AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "*Agreement*"), dated as May 3, 2019, is made by and among LOGICMARK, LLC, a Delaware limited liability company ("*Borrower*"), NXT-ID, INC., a Delaware corporation ("*Parent*"), each Subsidiary of Parent that is a party hereto or may become a party hereto pursuant to Section 7.13 of this Agreement (together with Borrower and Parent, collectively, the "*Grantors*") and [REDACTED], AS COLLATERAL AGENT (IN SUCH CAPACITY, AND TOGETHER WITH ANY SUCCESSORS IN SUCH CAPACITY, THE "*COLLATERAL AGENT*") FOR THE SECURED PARTIES (AS DEFINED IN THE CREDIT AGREEMENT REFERRED TO BELOW).

RECITALS

A. Pursuant to that certain Senior Secured Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), Borrower, [REDACTED], in its capacity as administrative agent (in such capacity and together with any successors in such capacity, the "*Administrative Agent*") and Collateral Agent, and the lenders party thereto from time to time (the "*Lenders*"), the Grantors are required to enter into this Agreement.

B. Each Grantor (other than Borrower) has, pursuant to that certain Guaranty Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Guaranty*"), among Parent, each of the Subsidiaries of Parent party thereto and the Administrative Agent, among other things, unconditionally guaranteed the Obligations (as defined in the Credit Agreement) of Borrower and the Loan Parties.

C. Each of Borrower and each other Grantor will receive substantial benefits from the execution and delivery of the Credit Agreement and performance of the obligations thereunder and is, therefore, willing to enter into this Agreement.

D. This Agreement is given by each Grantor in favor of the Collateral Agent for the benefit of the Secured Parties (as hereinafter defined) to secure the payment and performance of all of the Secured Obligations (as hereinafter defined).

NOW THEREFORE, in consideration of the foregoing and other benefits accruing each Grantor, the receipt and sufficiency of which are hereby acknowledged, each Grantor hereby makes the following grant, agreements and representations and warranties to the Collateral Agent for the benefit of the Secured Parties (and each of their respective successors and permitted assigns), as follows:

ARTICLE I

Definitions

SECTION 1.01. *Uniform Commercial Code Defined Terms.* Unless otherwise defined herein, terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC, including the following which are capitalized herein:

“Accounts”; *“Certificate of Title”*; *“Chattel Paper”*; *“Commercial Tort Claim”*; *“Commodity Account”*; *“Commodity Contract”*; *“Commodity Customer”*; *“Commodity Intermediary”*; *“Deposit Accounts”*; *“Documents”*; *“Electronic Chattel Paper”*; *“Entitlement Holder”*; *“Entitlement Order”*; *“Equipment”*; *“Financial Assets”*; *“Fixtures”*; *“Goods”*; *“Instruments”* (as defined in Article 9 rather than Article 3 of the UCC); *“Inventory”*; *“Investment Property”*; *Letter-of-Credit Rights*; *“Letters of Credit”*; *“Securities”*; *“Securities Account”*; *“Securities Intermediary”*; *“Security Entitlement”*; *“Supporting Obligations”*; and *“Tangible Chattel Paper”*.

SECTION 1.02. *Credit Agreement Defined Terms.* Capitalized terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement.

SECTION 1.03. *Definition of Certain Terms Used Herein.* As used herein, the following terms shall have the following meanings:

“Account Debtor” shall mean any Person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

“Accounts Receivable” shall mean all Accounts, chattel paper (including, without limitation, tangible chattel paper and electronic chattel paper), instruments (including, without limitation, promissory notes), letter of credit rights, general intangibles (including, without limitation, payment intangibles), and other obligations of any kind, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance, and all right, title and interest in any returned goods, together with all rights, title, securities and guarantees with respect thereto, including, without limitation, any rights to stoppage in transit, replevin, reclamation and resales, and all related security interests, liens, mortgages, pledges, letters of credit, supporting agreements and other related contracts, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired.

“Books and Records” shall mean all instruments, files, records, ledger sheets and documents (including, without limitation, customer lists, credit files, printouts and other computer output materials) evidencing, covering or relating to any of the Collateral.

“Borrower” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“Charges” shall mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including, without limitation, landlords’, carriers’, mechanics’, maritime, workmen’s, repairmen’s, laborers’, materialmen’s, suppliers’ and warehousemen’s Liens and other claims arising by operation of law) against, all or any portion of the Collateral.

“Collateral” shall mean with respect to each of the Grantors all of the following, in each case, whether now owned or hereafter acquired, wherever located and whether now or hereafter existing or arising:

- (a) Accounts;
- (b) Accounts Receivable;
- (c) Books and Records;
- (d) cash and Cash Equivalents;
- (e) Chattel Paper;
- (f) Commercial Tort Claims;
- (g) Deposit Accounts and Collateral Account Funds;
- (h) Documents;
- (i) Equipment;
- (j) Financial Assets;
- (k) Fixtures;
- (l) General Intangibles;
- (m) Goods;
- (n) Instruments;
- (o) Intellectual Property;
- (p) Inventory;
- (q) Investment Property;
- (r) Letter-of-Credit Rights;
- (s) Letters of Credit;
- (t) Securities Accounts;
- (u) Securities Collateral;
- (v) Supporting Obligations;
- (w) to the extent not covered by clauses (a) through (v) of this definition, all other personal property, whether tangible or intangible; and
- (x) Proceeds of any and all of the foregoing;

provided that, notwithstanding the foregoing, “Collateral” shall not include any Excluded Property; and *provided, further*, that if and when any property shall cease to be Excluded Property, such property shall be deemed at all times from and after the date thereof to constitute Collateral (unless and to the extent such property thereafter constitutes Excluded Property).

“*Collateral Account Funds*” shall mean, collectively, the following from time to time on deposit in the Deposit Accounts and Securities Accounts (other than any Excluded Accounts): all funds, investments (including, without limitation, all Cash Equivalents) and all certificates and instruments from time to time representing or evidencing such investments; all notes, certificates of deposit, checks and other instruments from time to time hereafter delivered to or otherwise possessed by the Collateral Agent for or on behalf of any Grantor in substitution for, or in addition to, any or all of the Collateral; and all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the items constituting Collateral.

“*Collateral Agent*” shall have the meaning assigned to such term in the Introductory paragraph of this Agreement.

“*Collateral Estate*” shall have the meaning assigned to such term in Section 2.01.

“*Computer Software*” shall mean all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing.

“*Control*” shall mean (i) in the case of each Deposit Account, “control,” as such term is defined in Section 9-104 of the UCC, (ii) in the case of any Security Entitlement, “control,” as such term is defined in Section 8-106(d) of the UCC, and (iii) in the case of any Commodity Contract, “control,” as such term is defined in Section 9-106(b) of the UCC.

“*Control Agreement*” shall mean an agreement in form and substance reasonably acceptable to the Collateral Agent for the purpose of effecting Control with respect to any Deposit Account, Securities Account or Commodity Account.

“*Copyright License*” shall mean each written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Grantor or which such Grantor otherwise has the right to license, or granting any right to such Grantor under any Copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

“*Copyrights*” shall mean, collectively, with respect to each Grantor, all copyrights (whether statutory or common law, whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Grantor, in each case, whether now owned or hereafter created or acquired by or assigned to such Grantor, including, without limitation, the copyrights, registrations and applications listed in Schedule 5.17 of the Credit Agreement, together with any and all (i) rights and privileges arising under applicable law with respect to such Grantor’s use of such copyrights and (ii) reissues, renewals, continuations and extensions thereof.

“*Credit Agreement*” shall have the meaning assigned to such term in the Recitals of this Agreement.

“*Excluded Accounts*” shall mean accounts used solely as, in each case, payroll accounts, health savings accounts, tax withholding or other fiduciary deposit accounts.

“*Excluded Property*” shall have the meaning specified in the Credit Agreement.

“*General Intangibles*” shall mean, collectively, all “general intangibles,” as such term is defined in the UCC, and in any event shall include, without limitation, all choses in action and causes of action and all other intangible personal property of any Grantor of every kind and nature now owned or hereafter acquired by any Grantor, including all rights and interests in partnerships, limited partnerships, limited liability companies and other unincorporated entities, corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Swap Contracts and other agreements), Intellectual Property, goodwill, registrations, franchises and tax refund claims.

“*Grantors*” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“*Intellectual Property*” shall mean all intellectual and similar property of any Grantor of every kind and nature now owned by a Grantor, or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Computer Software, Licenses, Trademarks, Trade Secrets, confidential or proprietary technical and business information and other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

“*Lenders*” shall have the meaning assigned to such term in the Recitals of this Agreement.

“*License*” shall mean any Patent License, Trademark License or Copyright License providing for the grant by or to any Grantor of any right to or under any Intellectual Property including, without limitation, those listed on Schedule 5.17 of the Credit Agreement.

“*Patent License*” shall mean any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Grantor or which any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

“*Patents*” shall mean all of the following now owned or hereafter acquired by a Grantor: (a) all industrial designs, mask works, letters patent, all registrations and recordings thereof, and all applications for letters patent, including registrations, recordings and pending applications in the United States Patent and Trademark Office, including those listed on Schedule 5.17 of the Credit Agreement, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein and all improvements thereto.

“*Permitted Liens*” means any Liens permitted under Section 7.01 of the Credit Agreement.

“*Pledged Debt Securities*” shall have the meaning assigned to such term in the definition of “Securities Collateral”.

“*Proceeds*” shall mean, collectively, all “proceeds,” as such term is defined in the UCC, and in any event shall include, without limitation, any consideration received from the sale, exchange, license, lease or other disposition of any asset or property that constitutes Collateral, any value received as a consequence of the possession of any Collateral and any payment received from any insurer or other Person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property that constitutes Collateral, and shall include (a) all cash and negotiable instruments received by or held on behalf of the Collateral Agent, (b) any claim of any Grantor against any third party for (and the right to sue and recover for and the rights to damages or profits due or accrued arising out of or in connection with) (i) past, present or future infringement of any Patent now or hereafter owned by any Grantor, or licensed under a Patent License, (ii) past, present or future infringement or dilution of any Trademark now or hereafter owned by any Grantor or licensed under a Trademark License or injury to the goodwill associated with or symbolized by any Trademark now or hereafter owned by any Grantor, (iii) past, present or future breach of any License and (iv) past, present or future infringement of any Copyright now or hereafter owned by any Grantor or licensed under a Copyright License, (c) income, fees, royalties and payments now or hereafter due and/or payable with respect to any Intellectual Property and (d) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

“Secured Obligations” means all Obligations of each Grantor now or hereafter existing under the Loan Documents.

“Secured Parties” means, collectively, the Administrative Agent, the Collateral Agent and the Lenders.

“Security Interest” shall have the meaning assigned to such term in Section 3.01(a).

“Securities Collateral” means (a)(i) all debt securities owned by any Grantor (including the property listed opposite the name of each Grantor on Schedule I hereto), (ii) all debt securities in the future issued to any Grantor and (iii) all promissory notes and any other instruments evidencing such debt securities (the “Pledged Debt Securities”); (b) subject to Section 5.13, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of the securities referred to in clauses (a) above; (c) subject to Section 5.13, all rights and privileges of any Grantor with respect to the securities and other property referred to in clauses (a) and (b) above; and (d) all Proceeds of any and all of the foregoing; *provided* that no Excluded Property shall constitute Securities Collateral.

“Trademark License” shall mean any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

“Trademarks” shall mean all of the following now owned or hereafter acquired by a Grantor: (a) all trademarks, service marks, domain names, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, slogans other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any State of the United States, and all extensions or renewals thereof, including those listed on Schedule 5.17 of the Credit Agreement, (b) all goodwill associated therewith or symbolized thereby and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

“Trade Secrets” shall mean all confidential and proprietary information, including, without limitation, know-how, show-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including, without limitation, industrial designs and mask works.

“UCC” shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; *provided, however*, that if by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Collateral Agent’s and the Secured Parties’ security interest in any item or portion of the 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 on the date hereof in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions relating to such provisions.

SECTION 1.04. *Rules of Construction.* Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular; and
- (5) where the context requires, provisions relating to any Collateral, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or any relevant part thereof.

ARTICLE II

Authority of Collateral Agent

SECTION 2.01. *General Authority of the Collateral Agent over the Collateral.* (a) By acceptance of the benefits of this Agreement and the Collateral Documents, each Secured Party shall be deemed irrevocably (i) to consent to the appointment of the Collateral Agent as its agent hereunder and under the Collateral Documents, (ii) to confirm that the Collateral Agent shall have the authority to act as the exclusive agent of such Secured Party for enforcement of any provisions of this Agreement and the Collateral Documents directly against any Grantor or the exercise of remedies hereunder or thereunder, (iii) to agree that such Secured Party shall not take any action to enforce any provisions of this Agreement or any Collateral Document against any Grantor or to exercise any remedy hereunder or thereunder and (iv) to agree to be bound by the terms of this Agreement and the Collateral Documents.

(b) The Collateral Agent hereby agrees that it holds and will hold all of its right, title and interest in, to and under the Collateral Documents and the Collateral granted to the Collateral Agent thereunder whether now existing or hereafter arising (all such right, title and interest being hereinafter referred to as the "*Collateral Estate*") under and subject to the conditions set forth in this Agreement and the other Loan Documents; and the Collateral Agent further agrees that it will hold such Collateral Estate for the benefit of the Secured Parties, as security for the enforcement of the payment of all Secured Obligations (subject to the limitations and priorities set forth herein and in the respective Loan Documents) and as security for the performance of and compliance with the covenants and conditions of this Agreement and each of the Loan Documents.

SECTION 2.02. *Exercise of Powers.* All of the powers, remedies and rights of the Collateral Agent as set forth in this Agreement may be exercised by the Collateral Agent in respect of any Collateral Document as though set forth in full therein and all of the powers, remedies and rights of the Collateral Agent as set forth in any Collateral Document may be exercised from time to time as herein and therein provided.

SECTION 2.03. *Remedies Not Exclusive.* (a) No remedy conferred upon or reserved to the Collateral Agent herein or in the Loan Documents is intended to be exclusive of any other remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or in any Loan Document or now or hereafter existing at law or in equity or by statute.

(b) No delay or omission by the Collateral Agent to exercise any right, remedy or power hereunder or under any Loan Document shall impair any such right, remedy or power or shall be construed to be a waiver thereof, and every right, power and remedy given by this Agreement or any Loan Document to the Collateral Agent may be exercised from time to time and as often as may be deemed expedient by the Collateral Agent.

(c) If the Collateral Agent shall have proceeded to enforce any right, remedy or power under this Agreement or any Loan Document and the proceeding for the enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then the Grantors, the Collateral Agent and the other Secured Parties shall, subject to any determination in such proceeding, severally and respectively be restored to their former positions and rights hereunder or thereunder with respect to the Collateral Estate and in all other respects, and thereafter all rights, remedies and powers of the Collateral Agent shall continue as though no such proceeding had been taken.

SECTION 2.04. *Waiver and Estoppel.* (a) Subject to the terms of the Collateral Documents, each Grantor agrees, to the extent it may lawfully do so, it will not at any time in any manner whatsoever claim, or take the benefit or advantage of, any appraisal, valuation, stay, extension, moratorium, turnover or redemption law, or any law permitting it to direct the order in which the Collateral shall be sold, now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance or enforcement of this Agreement or any Loan Document and hereby waives all benefit or advantage of all such laws and covenants that it will not hinder, delay or impede the execution of any power granted to the Collateral Agent in this Agreement or any Loan Document but will suffer and permit the execution of every such power as though no such law were in force; *provided* that nothing contained in this Section 2.04(a) shall be construed as a waiver of any rights of the Grantors under any applicable federal bankruptcy law or state insolvency law or any applicable foreign bankruptcy or insolvency law.

(b) Each Grantor, to the extent it may lawfully do so, on behalf of itself and all Persons under its control who may claim through or under it, including without limitation any and all subsequent creditors, vendees, assignees and licensors, waives and releases all rights to demand or to have any marshaling of the Collateral upon any sale, whether made under any power of sale granted herein or in any Loan Document or pursuant to judicial proceedings or upon any foreclosure or any enforcement of this Agreement or any Loan Document and consents and agrees that all the Collateral may at any such sale be offered and sold as an entirety.

(c) Each Grantor waives, to the extent permitted by applicable law, presentment, demand, protest and any notice of any kind (except notices explicitly required hereunder or under any Loan Document) in connection with this Agreement and the Loan Documents and any action taken by the Collateral Agent with respect to the Collateral.

SECTION 2.05. *Limitation on Collateral Agent's Duty in Respect of Collateral.* Except for the safe custody of any Collateral in its possession and to account to the Secured Parties and the Grantors for moneys and other property received by it hereunder or under any Collateral Document and any other express duties specified herein, in the Credit Agreement or in the Collateral Documents, the Collateral Agent shall not have any duty to the Grantors or to the Secured Parties as to any Collateral in its possession or control or in the possession or control of any of its agents or nominees, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

SECTION 2.06. *Limitation by Law.* All rights, remedies and powers provided in this Agreement or any Collateral Document may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions hereof are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable in whole or in part or not entitled to be recorded, registered or filed under the provisions of any applicable law.

SECTION 2.07. *Rights of Secured Parties in Respect of Secured Obligations.* Notwithstanding any other provision of this Agreement or any Collateral Document, the right of each Secured Party to receive payment of the Secured Obligations held by such Secured Party when due (whether at the stated maturity thereof, by acceleration or otherwise), as expressed in the instruments evidencing or agreements governing such Secured Obligations or to institute suit for the enforcement of such payment on or after such due date, shall not be impaired or affected without the consent of such Secured Party given in the manner prescribed by the instruments evidencing or agreements governing such Secured Obligations.

The provisions of this Article II are without limitation to the provisions under Article IX of the Credit Agreement relating to the Collateral Agent.

ARTICLE III
Security Interest

SECTION 3.01. *Security Interest.* (a) As security for the timely payment or performance, as the case may be, in full of the Secured Obligations, each Grantor hereby grants to the Collateral Agent and its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in, all of such Grantor's right, title and interest in, to and under the Collateral of such Grantor, in each case, whether now existing or owned or hereafter arising or acquired, and wherever located. The Liens granted hereunder to secure the Secured Obligations are referred to herein as the "*Security Interest*".

(b) Without limiting the foregoing, the Collateral Agent is hereby authorized to file one or more financing statements (including fixture filings and financing statements that describe the Collateral as "all assets" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC), continuation statements, filings with the United States Patent and Trademark Office, United States Copyright Office or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, or the priority thereof without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

SECTION 3.02. *No Assumption of Liability.* The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

SECTION 3.03. *Delivery of the Securities Collateral.* (a) Upon delivery to the Collateral Agent, (i) any certificated Pledged Debt Securities now or hereafter included in the Securities Collateral shall be accompanied by stock or bond powers duly executed in blank and (ii) all other property comprising part of the Securities Collateral shall be accompanied by proper instruments of assignment duly executed by the applicable Grantor. Each subsequent delivery of Pledged Debt Securities shall be accompanied by a schedule describing the securities then being pledged hereunder, which schedule shall be attached hereto as a supplement to Schedule I and made a part hereof. Each schedule so delivered shall supplement any prior schedules so delivered.

(b) Each Grantor agrees to promptly (and in any event within five (5) Business Days or the applicable time period required therefor in accordance with the Credit Agreement) deliver or cause to be delivered to the Collateral Agent any and all certificates or other instruments or documents representing the Pledged Debt Securities and other Securities Collateral required to be pledged to the Collateral Agent pursuant to the Loan Documents, subject to the exceptions and threshold amounts for Instruments and Tangible Chattel Paper specified in Section 4.09(a) hereof.

(c) Each Grantor will cause any Indebtedness for borrowed money owed to such Grantor by any Person to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent within five (5) Business Days of receipt thereof pursuant to the terms hereof subject to the exceptions and threshold amounts for Instruments and Tangible Chattel Paper specified in Section 4.09(a) hereof.

ARTICLE IV

Representations and Warranties

The Grantors jointly and severally represent and warrant to the Collateral Agent and the Secured Parties that:

SECTION 4.01. *Title and Authority.* Each Grantor has good and valid rights in and title to the Collateral with respect to which it has purported to grant a Security Interest hereunder and has all necessary power and authority to grant to the Collateral Agent the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval which has been obtained and is in full force and effect.

SECTION 4.02. *Investment Property.* As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, set forth on Schedule I hereto (as such schedule may be amended or supplemented from time to time) is a true, complete and correct list, in each case to the extent constituting Collateral, of all Indebtedness owed to such Grantor and all other investment property (including, without limitation, all (A) securities, whether certificated or uncertificated, (B) security entitlements, (C) securities accounts, (D) commodity contracts and (E) commodity accounts) of such Grantor, setting forth (i) in Part I of Schedule I all Indebtedness owed to such Grantor, the issuer thereof, description thereof, debt certificate number(s), final maturity and outstanding principal amount of such Indebtedness and (ii) in Part II of Schedule I, all other investment property owned by such Grantor, the issuer thereof, name of investment, certificate number(s), amount and other identification of such investment property.

SECTION 4.03. *Identity, Etc. of Grantors.* As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, set forth on Schedule III hereto (as such schedule may be amended or supplemented from time to time) is a true, complete and correct list showing such Grantor's exact legal name (as it appears in its certificate or articles of incorporation, limited liability membership agreement or similar organizational document, in each case as amended to the date hereof or the date of any amendment permitted under the Credit Agreement), location, address of chief executive office (and, if different, principal place of business), type of organization, jurisdiction of organization and organizational I.D. number (including taxpayer identification number), and, except as permitted under Section 5.10, there have been no changes in the name of such Grantor or in any other information as to such Grantor reflected on Schedule III hereto during the five years preceding the date hereof.

SECTION 4.04. *Location of Equipment.* As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Section 7.13 hereof, set forth on Schedule IV hereto (as such schedule may be amended or supplemented from time to time) is a true, complete and correct list of the locations of such Grantor's material tangible assets, including, without limitation, such Grantor's equipment and inventory.

SECTION 4.05. *Letters of Credit.* As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Section 7.13 hereof, set forth on Schedule V hereto (as such schedule may be amended or supplemented from time to time) is a true, complete and correct list of all letters of credit of which such Grantor is a beneficiary or assignee, showing for each such letter of credit the issuer thereof, nominated person (if any), account party, number, maximum available amount and date.

SECTION 4.06. *Filings.* (a) As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, all information set forth herein, including the Schedules annexed hereto (as such schedules may be amended or supplemented from time to time), is correct and complete, in all material respects. As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, the Collateral described on the Schedules annexed hereto (as such schedules may be amended or supplemented from time to time) constitutes all of the property of such type of Collateral owned or held by the Grantors. Fully completed UCC financing statements (including fixture filings, as applicable) containing a description of the Collateral have been prepared for filing in each governmental, municipal or other office specified on Schedule 5.08 to the Credit Agreement. Upon (i) the filing of fully completed UCC financing statements with the appropriate filing offices of each jurisdiction specified on Schedule 5.08 of the Credit Agreement and (ii) the taking of possession or control by the Collateral Agent of the Collateral to the extent possession or control by the Collateral Agent is required by this Agreement, the Collateral Agent for the benefit of the Secured Parties will have a perfected security interest under U.S. law in respect of all Collateral, to the extent such security interest can be perfected under the UCC by such filings and by taking such possession or control.

(b) With respect to all Collateral consisting of United States registered Patents, United States registered Trademarks and United States registered Copyrights, as of the date hereof, a fully executed Intellectual Property Security Agreement (as defined in the Credit Agreement) has been prepared for recordation with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. §1060 and 17 U.S.C. § 205. Upon the recordation of such Intellectual Property Security Agreement with the United States Patent and Trademark Office and United States Copyright Office, as applicable, and the filing of proper UCC financing statements with the appropriate filing offices of each jurisdiction specified in Schedule 5.08 of the Credit Agreement, the Collateral Agent for the benefit of the Secured Parties will have a perfected security interest under U.S. law in respect of all Collateral consisting of Patents, Trademarks and Copyrights registered in the United States in the name of any Grantor as of the date hereof, to the extent such security interest can be perfected by such recordation and filings.

SECTION 4.07. *Validity of Security Interest.* The Security Interest constitutes (a) a legal and valid security interest in all the Collateral, securing the payment and performance of the Secured Obligations, (b) subject to the filings described in Section 4.06, a perfected security interest in all Collateral in which a security interest may be perfected by filing, recording or registering a financing statement, intellectual property security agreement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the UCC in such jurisdictions, and (c) subject to compliance by the Grantors with Section 4.09, a perfected Security Interest in all Collateral consisting of Instruments and certificated securities in which a security interest may be perfected by possession by the Collateral Agent, in each case, to the extent required pursuant to the provisions hereof or of the other Loan Documents. The Security Interest is and shall be prior to any other Lien on any of the Collateral, except as otherwise permitted under Section 7.01 of the Credit Agreement.

SECTION 4.08. *Limitations on and Absence of Other Liens.* The Collateral is owned by the Grantors free and clear of any Lien, except for Permitted Liens. The Grantors have not filed or consented to the filing of (a) any financing statement, intellectual property security agreement or analogous document under the UCC or any other applicable laws covering any Collateral, (b) any assignment or collateral assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office and the United States Copyright Office or (c) any assignment in which any Grantor assigns or collaterally assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for those relating to Permitted Liens.

SECTION 4.09. *Other Actions.* In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's Security Interest, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Collateral:

(a) *Instruments and Tangible Chattel Paper.* As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, each Instrument and each item of Tangible Chattel Paper specified in Schedule I hereto (as such schedule may be amended or supplemented from time to time) in excess of the amounts specified in the next succeeding sentence has been properly endorsed, assigned and delivered to the Collateral Agent, and, if necessary, accompanied by instruments of transfer or assignment duly executed in blank. If any amount (i) individually in excess of \$100,000 or, (ii) together with all amounts payable evidenced by any Instrument or Tangible Chattel Paper not previously delivered to the Collateral Agent, in excess of \$250,000 in the aggregate for all Grantors, in each case payable under or in connection with any of the Collateral, shall be evidenced by any Instrument or Tangible Chattel Paper constituting Collateral, the Grantor acquiring such Instrument or Tangible Chattel Paper shall forthwith endorse, assign and deliver the same to the Collateral Agent for the benefit of the Secured Parties, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time request; *provided, however,* that, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent shall return such Instrument or Tangible Chattel Paper to such Grantor from time to time, to the extent necessary for collection in the ordinary course of such Grantor's business, and without limiting the obligations of the Grantors hereunder.

(b) *Deposit Accounts and Investment Property.* (i) Each Grantor hereby represents and warrants that as of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, (A) it has neither opened nor maintains any Deposit Accounts other than those listed in Schedule I hereto (as such schedule may be amended or supplemented from time to time), (B) it has neither opened nor maintains any Securities Accounts or Commodity Accounts other than those listed in Schedule I hereto (as such schedule may be amended or supplemented from time to time) and (C) it does not hold, own or have any interest in any certificated securities or uncertificated securities other than those constituting Securities Collateral, those maintained in Securities Accounts or Commodity Accounts listed in Schedule I hereto (as such schedule may be amended or supplemented from time to time).

(ii) In the event the Grantors have cash, Investment Property or other funds maintained in any Deposit Accounts, Securities Accounts and/or Commodity Accounts (other than Excluded Accounts), Borrower shall promptly notify the Collateral Agent, and the Collateral Agent and the applicable Grantor shall (x) within fifteen (15) days (or such longer period as the Collateral Agent may agree in its sole discretion) after the date hereof with respect to such Deposit Accounts, Securities Accounts and/or Commodity Accounts existing on the Closing Date, and (y) with respect to such Deposit Accounts, Securities Accounts and/or Commodity Accounts created after the date hereof, promptly thereafter, enter into Control Agreements in favor of the Collateral Agent for the benefit of the Secured Parties with the banks, Securities Intermediaries or Commodity Intermediaries with which its Deposit Accounts, Securities Accounts and Commodity Accounts (other than Excluded Accounts) are maintained granting to the Collateral Agent Control over such accounts. The Collateral Agent agrees with each Grantor that, in the case of a Deposit Account subject to Collateral Agent's Control, the Collateral Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account or withhold any withdrawal rights from such Grantor with respect to funds from time to time credited to any Deposit Account or, in the case of a Securities Account or Commodity Account subject to Collateral Agent's Control, the Collateral Agent shall not give any Entitlement Orders or instructions or directions to any issuer of uncertificated securities, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Grantor, unless, in each case, an Event of Default has occurred and is continuing.

(iii) If any Grantor shall at any time hold or acquire any certificated securities (w) constituting Investment Property and other Securities Collateral required to be pledged under the Credit Agreement having a fair market value in excess of \$100,000 individually, or \$250,000 in the aggregate, or (x) in respect of the Equity Interests of any Subsidiary (excluding any Equity Interests constituting Excluded Property), such Grantor shall promptly endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank. If any securities now or hereafter acquired by any Grantor (w) constituting Investment Property required to be pledged under the Credit Agreement having a fair market value in excess of \$100,000 individually, or \$250,000 in the aggregate, or (x) in respect of the Equity Interests of any Subsidiary (excluding any Equity Interests constituting Excluded Property), are uncertificated and are held in accounts required to be subject to a Control Agreement pursuant to clause (ii) of this Section 4.09(b) and are not subject to a Control Agreement in favor of the Collateral Agent, such Grantor shall promptly notify the Collateral Agent, and the Collateral Agent shall notify the Lenders thereof. Such Grantor shall cause the issuer to agree to comply with instructions from the Collateral Agent as to such securities, without further consent of any Grantor.

(iv) As between the Collateral Agent and the Grantors, the Grantors shall bear the investment risk with respect to the Investment Property, and the risk of loss of, damage to or the destruction of the Investment Property, whether in the possession of, or maintained as a security entitlement or deposit by, or subject to the control of, the Collateral Agent, a Securities Intermediary, a Commodity Intermediary, any Grantor or any other Person; *provided, however*, that nothing contained in this Section 4.09(b) shall release or relieve any Person of its duties and obligations under any Control Agreement or under applicable law.

(v) Each Grantor shall promptly pay all Charges and fees with respect to the Investment Property in which a security interest is granted by it under this Agreement, except that no such Charge or fee need be paid if the amount or validity thereof is currently being contested in good faith, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor, and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein. After the occurrence and during the continuance of an Event of Default, in the event any Grantor shall fail to make any such payment contemplated in the immediately preceding sentence, the Collateral Agent may (but is not obligated to) do so for the account of such Grantor and the Grantors shall promptly reimburse and indemnify the Collateral Agent from all liabilities, costs and expenses incurred by the Collateral Agent under this Section 4.09(b)(v).

(c) *Electronic Chattel Paper and Transferable Records.* If any amount (i) individually in excess of \$100,000 or, (ii) together with all amounts payable evidenced by any Electronic Chattel Paper or transferable record as to which control was not previously given to the Collateral Agent, in excess of \$250,000 in the aggregate for all Grantors, in each case payable under or in connection with any of the Collateral, shall be evidenced by any Electronic Chattel Paper or any “transferable record,” as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Grantor acquiring such Electronic Chattel Paper or transferable record shall promptly notify the Collateral Agent. Such Grantor shall take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent for the benefit of the Secured Parties control under UCC Section 9-105 of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent will arrange for the Grantor to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act, as applicable, that a party in control may allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such Electronic Chattel Paper or transferable record.

(d) *Letter-of-Credit Rights.* If any Grantor is at any time a beneficiary under a Letter of Credit now or hereafter issued in favor of such Grantor in a face amount individually in excess of \$100,000 or together with all amounts payable evidenced by any Letter-of-Credit Rights not previously delivered to the Collateral Agent in excess of \$250,000 in the aggregate for all Grantors, such Grantor shall promptly notify the Collateral Agent, and the Collateral Agent shall notify the Lenders and, such Grantor shall use commercially reasonable efforts to (unless the Collateral Agent consents otherwise) either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to the Collateral Agent for the benefit of the Secured Parties of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such Letter of Credit.

(e) *Commercial Tort Claims.* As of the date hereof and the date of each delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, each Grantor hereby represents and warrants that it holds no Commercial Tort Claims other than those listed on Schedule II hereto (as such schedule may be amended or supplemented from time to time). If any Grantor shall at any time hold or acquire a Commercial Tort Claim having a value (i) individually in excess of \$100,000 or, (ii) together with all amounts payable evidenced by any Commercial Tort Claims not previously delivered to the Collateral Agent, in excess of \$250,000 in the aggregate for all Grantors, such Grantor shall promptly notify the Collateral Agent. Such Grantor shall grant to the Collateral Agent for the benefit of the Secured Parties in writing signed by such Grantor a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement. The Grantor(s) shall have sole control of all aspects of Commercial Tort Claims that are subject to this Section 4.09(e) unless and until an Event of Default has occurred and is continuing, the Secured Obligations have been accelerated as set forth in Article VIII of the Credit Agreement and the Collateral Agent or the other Secured Parties have begun exercising rights with respect to other Collateral under this Agreement and as set forth in Article VIII of the Credit Agreement.

SECTION 4.10. *No Conflicts, Consents, etc.* In the event that an Event of Default has occurred and is continuing and the Collateral Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Collateral Agent, such Grantor agrees to use commercially reasonable efforts to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.11. *Intellectual Property*. Each Grantor is the exclusive owner of all right, title and interest in or is otherwise entitled to use all Intellectual Property used in or material to the operation of such Grantor's business subject only to the terms of the Licenses. All necessary registration, maintenance and renewal fees currently due and owing in connection with the Copyrights, Patents and Trademarks listed on Schedule 5.17 of the Credit Agreement have been paid, and all necessary documents, recordings and certifications in connection therewith have been filed with the relevant authorities to record and perfect each Grantor's interest and chain of title in such Copyrights, Patents and Trademarks, and such Copyrights, Patents and Trademarks are valid and enforceable. No claim has been asserted and is pending by any Person with respect to the use by any Grantor of any Intellectual Property or challenging or questioning the validity or enforceability of any Intellectual Property necessary for the conduct of the business of any Grantor. To the knowledge of the Grantors, no Person is engaging in any activity that infringes, misappropriates or otherwise violates or conflicts with any Intellectual Property. Each Grantor has taken commercially reasonable measures to maintain the confidentiality and value of all Trade Secrets used or held for use in the operation of the business of such Grantor. To the knowledge of the Grantors, no Trade Secrets have been disclosed by any Grantor except pursuant to valid and appropriate non-disclosure and/or license agreements that have not been breached. The operation of each Grantor's business as currently conducted or as contemplated to be conducted and the use of the Intellectual Property in connection therewith do not infringe, misappropriate, dilute, misuse or otherwise violate the intellectual property rights of any third party.

SECTION 4.12. *Securities Collateral*. (a) As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, each Grantor is the direct owner, beneficially and of record, of the Pledged Debt Securities indicated on Schedule I (as such schedule may be amended or supplemented from time to time) and holds the same free and clear of all Liens other than Permitted Liens.

(b) No Grantor will make any assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Securities Collateral, other than Liens securing the Secured Obligations.

(c) Subject to Sections 3.03, 4.09(b)(iii) and 5.13, each Grantor will cause any and all Securities Collateral (whether for value paid by such Grantor or otherwise) to be delivered to the Collateral Agent and pledged or assigned hereunder.

(d) All of the Pledged Debt Securities issued by any Grantor have been duly authorized, executed and delivered and, as of the date hereof, to the knowledge of such Grantor, are the enforceable obligations of the issuer thereof.

(e) As of the date hereof and the date of delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, Schedule I hereof (as such schedule may be amended or supplemented from time to time) sets forth all of the Subsidiaries of each Loan Party whose Equity Interests are required to be pledged pursuant to Section 6.11 of the Credit Agreement and the Collateral and Guarantee Requirement of the Credit Agreement.

ARTICLE V

Covenants

SECTION 5.01. *Protection of Security.* Each Grantor shall, at its own cost and expense, take any and all actions reasonably necessary to defend its right, interest and title in and to the Collateral against all Persons (other than, as to Permitted Liens, the holders of Permitted Liens) and to defend the Security Interest of the Collateral Agent in the Collateral and the priority thereof against any Lien other than Permitted Liens.

SECTION 5.02. *Further Assurances.* Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments, agreements and documents and take all such actions as the Collateral Agent may from time to time reasonably request to assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby and by the other Loan Documents, including, without limitation, the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements or other documents in connection herewith or therewith.

SECTION 5.03. *Taxes; Encumbrances.* During the continuance of an Event of Default, the Collateral Agent at its option may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral except to the extent the same constitute Permitted Liens, and may pay for the maintenance and preservation of the Collateral to the extent any Grantor fails to do so as required by this Agreement and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any payment made or any reasonable documented expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, that nothing in this Section 5.03 shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, liens, security interests or other encumbrances or maintenance or preservation as set forth herein or in the other Loan Documents.

SECTION 5.04. *Assignment of Security Interest.* If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person to secure payment and performance of an Account in an amount in excess of \$250,000, such Grantor shall promptly assign such security interest to the Collateral Agent for the benefit of the Secured Parties. Such assignment need not be filed of public record unless necessary to continue the first priority and perfected status of the Security Interest of the Collateral Agent against creditors of and transferees from the Account Debtor or other Person granting the security interest.

SECTION 5.05. *Continuing Obligations of the Grantors.* Each Grantor shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless each of the Collateral Agent, each Secured Party and each of their respective affiliates, agents and representatives from and against any and all liability for such performance except to the extent resulting from the gross negligence or willful misconduct of the Collateral Agent or such Secured Party as determined by a final non-appealable judgment of a court of competent jurisdiction.

SECTION 5.06. *Use and Disposition of Collateral.* None of the Grantors shall grant any Lien in respect of the Collateral other than Liens securing the Secured Obligations and Permitted Liens.

SECTION 5.07. *Limitation on Modification of Accounts.* Subject in each case to its reasonable business judgment, none of the Grantors will, without the Collateral Agent's prior written consent, grant any extension of the time of payment of any of the Accounts Receivable in excess of \$250,000, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with such Grantor's collection practices as in effect from time to time.

SECTION 5.08. *Insurance.* The Grantors, at their own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Inventory and Equipment in accordance with Section 6.07 of the Credit Agreement, and the Collateral Agent shall be named as the loss payee and/or additional insured, as applicable, thereunder. Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent), for so long as any Secured Obligations remain outstanding, as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. So long as no Event of Default has occurred and is continuing, all actions to be taken with respect to the making, settling and adjusting of claims under insurance policies may be taken by the Grantors without any requirement of participation or consent from the Collateral Agent.

SECTION 5.09. *Certain Covenants Regarding Intellectual Property.* (a) With respect to each item of its Intellectual Property that is material to the conduct of each Grantor's business, each Grantor agrees to take, at its expense, all commercially reasonable steps, including, without limitation, with respect to Intellectual Property owned by such Grantor that is registered or for which an application for registration is pending, in the U.S. Patent and Trademark Office and the U.S. Copyright Office, to maintain the validity and enforceability of such Intellectual Property. No Grantor shall, without the written consent of the Collateral Agent, discontinue use of or otherwise abandon any of its Intellectual Property, or abandon any right to file an application for Patent, Trademark, or Copyright, unless such Grantor shall have determined that such use or the pursuit or maintenance of such Intellectual Property is no longer desirable in the conduct of such Grantor's business and that the loss thereof would not be reasonably likely to have a Material Adverse Effect.

(b) Each Grantor shall use proper statutory notice as required by law in connection with its use of each item of its Intellectual Property. No Grantor shall do or authorize any act or knowingly omit to do any act whereby any of its material Intellectual Property is likely to lapse or become invalid or unenforceable or placed in the public domain.

(c) Each Grantor shall notify the Collateral Agent as soon as practicable if it knows that any Patent, Trademark or Copyright material to the conduct of its business may become abandoned, lost or dedicated to the public, or of any adverse determination or development including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or United States Copyright Office or other proceeding with respect to its Intellectual Property regarding such Grantor's ownership of any Patent, Trademark or Copyright material to the conduct of its business, or its right to register the same, or to keep and maintain the same.

(d) In the event that any Grantor, either itself or through any agent, employee, licensee or designee, files an application for or, following the Closing Date, becomes the registered owner of, any Patent, Trademark or Copyright (or for the registration of any Trademark or Copyright), such Grantor shall, with the delivery of any supplemental Schedules pursuant to Sections 5.11 and 7.13 hereof, notify the Collateral Agent and such Grantor shall execute and deliver any and all agreements, instruments, documents and papers as are necessary to evidence the Secured Parties' security interest in such Patent, Trademark or Copyright or application therefor, and each Grantor hereby appoints the Collateral Agent as its attorney-in-fact to execute and file such writings solely for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable until this Agreement is terminated.

(e) Each Grantor will take all commercially reasonable steps that are consistent with its reasonable business judgment in any proceeding before the United States Patent and Trademark Office, United States Copyright Office or any other proceeding with respect to its Intellectual Property to maintain and pursue each material application relating to the Patents, Trademarks and/or Copyrights (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registration of the Trademarks or Copyrights that is material to the conduct of any Grantor's business, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(f) In the event that any Grantor has reason to believe that any Intellectual Property which is material to its business has been or is about to be infringed, misappropriated or diluted by a third party, such Grantor shall promptly notify the Collateral Agent and shall, if consistent with its reasonable business judgment, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, or take such other actions as are appropriate under the circumstances to protect such Collateral.

(g) To each Grantor's knowledge, on and as of the date hereof, such Grantor is not infringing upon any patent, trademark or copyright of any other Person other than such infringement that, individually or in the aggregate, would not (or would not reasonably be expected to) result in a material adverse effect on the value or utility of the Collateral consisting of Intellectual Property or any portion thereof material to the use and operation of the Collateral and no proceedings have been instituted or are pending against such Grantor or, to such Grantor's knowledge, threatened, and no claim against such Grantor has been received by such Grantor, alleging any such violation.

(h) Upon and during the continuance of an Event of Default, each Grantor shall upon the written request of the Collateral Agent use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each Copyright License, Patent License or Trademark License, in each case, material to the conduct of such Grantor's business to effect the assignment of all of such Grantor's right, title and interest thereunder to the Collateral Agent or its designee.

SECTION 5.10. *Location of Collateral; Post Closing Changes.* (a) Each Grantor will keep its material tangible assets, including equipment and inventory, at the places specified in Schedule IV hereto (as such schedule may be amended or supplemented from time to time) or, upon 30 days' (or such shorter time as the Collateral Agent may agree) prior written notice to the Collateral Agent, at such other places designated by such Grantor in such notice and (b) no Grantor will change its name, structure, legal existence, type of organization, jurisdiction of organization, tax identification number, organizational identification number or location or chief executive office from those set forth in Schedule III hereto (as such schedule may be amended or supplemented from time to time) without giving the Collateral Agent at least ten (10) Business Day's prior written notice (or such lesser time as may be agreed by the Collateral Agent).

SECTION 5.11. *Supplemental Schedules.* Concurrently with the delivery of each Compliance Certificate pursuant to Section 6.01(d) of the Credit Agreement, the Grantors shall deliver written supplements to Schedules I and IV annexed hereto, updating the information set forth in such Schedules (as supplemented from time to time) or a confirmation that there has been no material change in such information since the date hereof or the most recently delivered Schedules.

SECTION 5.12. *Registration in Nominee Name; Denominations.* The Collateral Agent, on behalf of the Secured Parties, shall have the right to hold the Pledged Debt Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the Grantors, endorsed or assigned in blank or in favor of the Collateral Agent; *provided* that the Collateral Agent shall not exercise any such right unless an Event of Default is continuing and Collateral Agent has provided prior written notice thereof to the Grantors. During the continuance of any Event of Default, each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Debt Securities registered in the name of such Grantor. During the continuance of any Event of Default, the Collateral Agent shall at all times have the right to exchange the certificates representing Pledged Debt Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 5.13. *Voting Rights; Dividends and Interest, etc.* (a) Unless and until an Event of Default shall have occurred and be continuing:

(i) Each Grantor shall have the right to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Debt Securities or any part thereof for any purpose not inconsistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; *provided, however*, that such Grantor will not be entitled to exercise any such right if the result thereof would reasonably be expected to materially and adversely affect the rights and remedies of any of the Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;

(ii) The Collateral Agent shall execute and deliver to each Grantor, or cause to be executed and delivered to each Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above and to receive the cash dividends it is entitled to receive pursuant to subparagraph (iii) below; and

(iii) Subject to the next two sentences, each Grantor shall be entitled to receive and retain any and all cash dividends, interest, principal and other amounts paid on the Pledged Debt Securities to the extent and only to the extent that such cash dividends, interest, principal and other amounts are permitted by, and otherwise paid in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws. All noncash dividends, interest, principal and other amounts, and all dividends, interest, principal and other amounts paid or payable in cash or otherwise in connection with a partial or total liquidation or dissolution, return of capital, capital surplus or paid-in surplus, and all other distributions (other than distributions referred to in the preceding sentence) made on or in respect of the Pledged Debt Securities, whether paid or payable in cash or otherwise, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of the issuer of any Pledged Debt Securities or received in exchange for Pledged Debt Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Securities Collateral (except to the extent constituting Excluded Property), and, if any Grantor receives any certificated securities or property not constituting Excluded Property (x) in a transaction not permitted by the Credit Agreement or, (y) upon the occurrence and during the continuance of an Event of Default, in connection with the preceding sentences of this subparagraph (iii), such securities or property shall be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary endorsement).

(b) Upon the occurrence and during the continuance of an Event of Default, all rights of any Grantor to dividends, interest, principal or other amounts that such Grantor is authorized to receive pursuant to paragraph (a)(iii) above shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other amounts. All dividends, interest, principal or other amounts received by the Grantor contrary to the provisions of this Section 5.13 shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be applied in accordance with the provisions of Section 6.02. Within ten (10) Business Days after all such Events of Default have been cured or waived, the Collateral Agent shall return to each Grantor all cash dividends, interest or principal (including interest earned thereon) that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) above and which remain in such account; *provided, however*, the Collateral Agent shall be under no obligation with respect to the investment of such cash dividends, interest or principal, including, for the avoidance of doubt, any requirement to invest such cash dividends, interest or principal in any class of investment, interest-bearing or otherwise.

(c) Upon the occurrence and during the continuance of an Event of Default, all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 5.13, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 5.13, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers upon prior written notice to Grantors. After all Events of Default have been cured or waived, such Grantor will have the right to exercise the voting and consensual rights and powers that it would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above.

ARTICLE VI

Remedies

SECTION 6.01. *Remedies upon Default.* After the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or, to the extent delivery of such Collateral would be commercially impracticable, make such Collateral available), and it is agreed that the Collateral Agent shall have the right to take any of or all the following actions at the same or different times: (a) with respect to any Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Collateral by the applicable Grantors to the Collateral Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of applicable law or any then existing licensing arrangements to the extent that waivers cannot be obtained), and (b) with or without legal process but with prior notice or demand for performance, to take possession of the Collateral and so long as there is not a breach of peace, without liability except for its gross negligence or willful misconduct, to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral and, generally, to exercise any and all rights afforded to a secured party under the UCC or other applicable law. Without limiting the generality of the foregoing, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right, subject to compliance with applicable federal and state securities laws, to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Subject to any mandatory provision of applicable law, each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give a Grantor not less than ten (10) Business Days' prior written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC) of the Collateral Agent's intention to make any sale or other disposition of such Grantor's Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 6.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released, to the maximum extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any Secured Obligation then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof, the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding any cure of any Event of Default or any repayment of the Obligations following the entry into such an agreement. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Each Grantor acknowledges that any sale pursuant to the provisions of this Section 6.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-611 of the UCC.

SECTION 6.02. *Application of Proceeds*. The proceeds of any sale of Collateral pursuant to Section 6.01, as well as any Collateral consisting of cash, shall be applied by the Collateral Agent in accordance with Section 8.03 of the Credit Agreement.

SECTION 6.03. *Grant of License to Use Intellectual Property*. For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Article at such time as the Collateral Agent shall be lawfully or contractually entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sublicense any of the Collateral consisting of Intellectual Property now owned or hereafter acquired by such Grantor, except to the extent that such license may not be granted as a result of a pre-existing license arrangement, wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all Computer Software and programs used for the compilation or printout thereof. The use of such license by the Collateral Agent may be exercised after the occurrence and during the continuation of an Event of Default; *provided* that any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default. Such license shall be irrevocable until this Agreement is terminated.

ARTICLE VII

Miscellaneous

SECTION 7.01. *Notices*. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Schedule 10.02 of the Credit Agreement. All communications and notices hereunder to each Grantor shall be given to it in care of Borrower at Borrower's address set forth in Schedule 10.02 of the Credit Agreement.

SECTION 7.02. *Survival of Agreement.* All covenants, agreements, representations and warranties made by any Grantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the making by the Lenders of the Term Loan, regardless of any investigation made by the Secured Parties or on their behalf, and shall continue in full force and effect until this Agreement shall terminate.

SECTION 7.03. *Binding Effect.* This Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed and delivered on behalf of the Collateral Agent, and thereafter shall be binding upon such Grantor and the Collateral Agent and their respective successors and assigns, and shall inure to the benefit of such Grantor, the Collateral Agent and the other Secured Parties and their respective successors and permitted assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly permitted by each of the other Loan Documents.

SECTION 7.04. *Successors and Assigns.* Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party permitted under the Credit Agreement; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 7.05. GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, EXCEPT (I) AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND (II) TO THE EXTENT THAT THE VALIDITY AND PERFECTION OR THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTEREST CREATED HEREBY, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

SECTION 7.06. Waivers; Amendment; Several Agreement; Confidentiality. (a) No failure or delay of the Collateral Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent hereunder and of the other Secured Parties under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provisions of this Agreement or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Grantor in any case shall entitle such Grantor or any other Grantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into among Borrower, the Collateral Agent and the Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consents required in accordance with Section 10.01 of the Credit Agreement.

(c) This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

(d) The Collateral Agent agrees to maintain the confidentiality of Loan Party Information as provided in, and otherwise comply with the requirements of, Section 10.08 of the Credit Agreement.

SECTION 7.07. WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 7.07 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 7.08. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions. It is understood and agreed among the parties that this Agreement shall create separate security interests in the Collateral securing the Secured Obligations as provided in Section 3.01, and that any determination by any court with jurisdiction that the security interest securing any Secured Obligation or class of Secured Obligations is invalid for any reason shall not in and of itself invalidate the Security Interest securing any other Secured Obligations hereunder.

SECTION 7.09. *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract and shall become effective as provided in Section 7.03. Delivery of an executed signature page to this Agreement by facsimile transmission or electronic transmission of a .pdf copy or an executed counterpart of this Agreement shall be effective as delivery of a manually executed counterpart hereof.

SECTION 7.10. *Headings*. Article and Section headings used herein are for the purpose of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 7.11. *Jurisdiction; Consent to Service of Process*. (a) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR OTHER DOCUMENT RELATED HERETO OR THERETO.

(b) Each party to this Agreement irrevocably consents to service of process in the manner provided for in Section 10.02 of the Credit Agreement. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 7.12. *Termination*. (a) This Agreement and the Security Interest shall terminate upon the Termination Date (as defined in the Credit Agreement), at which time the Collateral Agent shall execute and deliver to the Grantors, at the Grantors' expense, all UCC termination statements and other documents which the Grantors shall reasonably request to evidence such termination and shall return to the Grantors any Collateral held by the Collateral Agent. Any execution and delivery of termination statements or documents pursuant to this Section 7.12(a) shall be without recourse to or warranty by the Collateral Agent.

(b) Upon any sale, lease, transfer or other disposition by any Grantor of any Collateral that is permitted under the Loan Documents, upon the effectiveness of any written consent to the release of the Security Interest granted hereby in any Collateral pursuant to Section 9.11(a)(iii) of the Credit Agreement, or upon the release of any Grantor from its obligations under its Guaranty pursuant to Section 9.11(b) of the Credit Agreement, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor's expense, all UCC termination statements and other documents that such Grantor shall reasonably request to evidence such termination or release and shall return to such Grantor any Collateral owned by such Grantor that is in the Collateral Agent's possession. Any execution and delivery of UCC termination statements and similar documents pursuant to this Section 7.12(b) shall be without recourse to or warranty by the Collateral Agent.

SECTION 7.13. *Additional Grantors.* To the extent any Subsidiary shall be required to become a Grantor pursuant to any Loan Document, upon execution and delivery by the Collateral Agent and such Subsidiary of an instrument in the form of Annex I hereto and Schedules annexed thereto, such Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor hereunder. The rights and obligations of each Grantor thereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

SECTION 7.14. *Financing Statements.* Each Grantor hereby irrevocably authorizes the Collateral Agent (for so long as any Secured Obligation remains outstanding) at any time and from time to time, in the instance that the Grantor has not filed a financing statement or amendment as required, to file in any relevant jurisdiction any initial financing statements and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including (i) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor, (ii) any financing or continuation statements or other documents without the signature of such Grantor where permitted by law, including the filing of a financing statement describing the Collateral as “all assets in which the Grantor now owns or hereafter acquires rights” (or words of similar import) and (iii) in the case of a financing statement filed as a fixture filing or covering Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Collateral relates, and upon request of Borrower, the Collateral Agent shall promptly provide copies of any such filings to Borrower at its address for notices specified in Section 7.01. Each Grantor agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon request.

SECTION 7.15. *Collateral Agent Appointed Attorney-in-Fact.* Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable until this Agreement is terminated and is coupled with an interest. The Collateral Agent shall, on prior notice to each Grantor, have the right, after the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent’s name or in the name of such Grantor, (a) to receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral; (d) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (e) to send verifications of Accounts to any Account Debtor; (f) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (g) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (h) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and (i) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; *provided*, that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, willful misconduct or bad faith.

SECTION 7.16. *Securities Act, etc.* In view of the position of the Grantors in relation to the Pledged Debt Securities, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Debt Securities permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Debt Securities, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Debt Securities could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Debt Securities under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor recognizes that in light of such restrictions and limitations the Collateral Agent may, with respect to any sale of the Pledged Debt Securities, limit the purchasers to those who will represent and agree, among other things, to acquire such Pledged Debt Securities for their own account for investment, and not with a view to the distribution or resale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent (but subject to the other provisions of this Agreement), (a) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Debt Securities or part thereof shall have been filed under the Federal Securities Laws and (b) may approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent shall incur no responsibility or liability for selling all or any part of the Pledged Debt Securities at a price that the Collateral Agent may deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 7.16 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

SECTION 7.17. *Collateral Agent.* The parties hereto hereby agree that the Collateral Agent shall be entitled to all of the rights, protections, privileges, indemnities and immunities afforded to it as the Collateral Agent under the Credit Agreement in connection with its execution of this Agreement and performance of its obligations hereunder.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LOGICMARK, LLC, as a Grantor

By: _____
Name: _____
Title: _____

NXT-ID, INC., as a Grantor

By: _____
Name: _____
Title: _____

3D-ID, LLC, as a Grantor

By: _____
Name: _____
Title: _____

██████████, as Collateral Agent

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
SECURITY AGREEMENT

FORM OF JOINDER AGREEMENT

SUPPLEMENT NO. ___ (this "*Supplement*") dated as of [____], to the Security Agreement (the "*Security Agreement*") dated as of May 3, 2019, among LOGICMARK, LLC, a Delaware limited liability company ("*Borrower*"), NXT-ID, Inc., a Delaware corporation ("*Parent*"), each Subsidiary of Parent listed on the signature pages thereto (together with Borrower and Parent, collectively, the "*Grantors*") and [REDACTED], as collateral agent (in such capacity, and together with any successors in such capacity, the "*Collateral Agent*") for the Secured Parties.

A. Reference is made to (a) the Senior Secured Credit Agreement, dated as of May 3, [REDACTED] time to time, the "*Credit Agreement*", among Borrower, the lenders party thereto (the "*Lenders*") and [REDACTED], in its capacities as Administrative Agent and Collateral Agent and (b) the Guaranty Agreement, dated as of May 3, 2019 (as amended, supplemented or otherwise modified from time to time, the "*Guaranty*"), among Parent, each Subsidiary of Parent party thereto from time to time and the Collateral Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement.

C. Pursuant to Section 6.11 of the Credit Agreement and the "Collateral and Guarantee Requirement" of the Credit Agreement (and subject to certain limitations specified therein), certain Subsidiaries of Parent are required to enter into the Collateral Documents upon the occurrence of certain events and circumstances specified therein. The undersigned Subsidiary (the "*New Guarantor*") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a party to the Security Agreement.

Accordingly, the Collateral Agent and the New Guarantor agree as follows:

SECTION 1. In accordance with Section 6.11 of the Credit Agreement, the "Collateral and Guarantee Requirement" of the Credit Agreement and Section 7.13 of the Security Agreement, the New Guarantor by its signature below becomes a Grantor under the Security Agreement with the same force and effect as if originally named therein as a party thereto and hereby (a) agrees to all terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct in all material respects (without giving effect to any materiality or material adverse effect qualification therein) on and as of the date hereof (after giving effect to this Supplement). In furtherance of the foregoing, the New Guarantor, as security for the payment and performance in full of the Secured Obligations (as defined in the Security Agreement), does hereby grant to the Collateral Agent (and its successors and assigns), for the benefit of the Secured Parties (and their respective successors and permitted assigns), a security interest in and lien on all of the New Guarantor's right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Guarantor. The Security Agreement is hereby incorporated herein in its entirety by reference.

SECTION 2. The New Guarantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Guarantor and the Collateral Agent. Delivery of an executed signature page to this Supplement by facsimile transmission or electronic transmission of a .pdf copy or an executed counterpart of this Agreement shall be effective as delivery of a manually executed counterpart of this Supplement.

SECTION 4. Attached hereto are supplemental schedules to Schedules I to V to the Security Agreement. The New Guarantor hereby represents and warrants that, as of the date hereof, all information set forth in the schedules annexed hereto is true, complete and correct in all material respects (without giving effect to any materiality or material adverse effect qualification therein).

SECTION 5. Except as expressly supplemented hereby, each of the Collateral Documents shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Collateral Documents shall not in any way be affected or impaired thereby (it being understood that the invalidity a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 7.01 of the Security Agreement. All communications and notices hereunder of the New Guarantor shall be given to it at the address set forth under its signature below.

SECTION 9. The New Guarantor agrees, to the extent provided in Section 10.04 of the Credit Agreement, to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of external counsel for the Collateral Agent.

SECTION 10. The Collateral Agent shall not be responsible for the validity or sufficiency of this Supplement nor for the recitals herein.

[Signature Pages Follow]

ANNEX I-2

IN WITNESS WHEREOF, the New Guarantor and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

[Name of New Guarantor],

By: _____
Name:
Title:
Address:

SIGNATURE PAGE
SUPPLEMENT NO. [] TO SECURITY AGREEMENT

██████████, as Collateral Agent

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
SUPPLEMENT NO. [] TO SECURITY AGREEMENT

EXECUTION VERSION

SECURITIES PLEDGE AGREEMENT

This SECURITIES PLEDGE AGREEMENT (the "*Agreement*") is dated as of May 3, 2019, by and among LOGICMARK, LLC, a Delaware limited liability company ("*Borrower*"), NXT-ID, INC., a Delaware corporation ("*Parent*"), and each Subsidiary of Parent listed on the signature pages hereto (together with Borrower, Parent and any parties who execute and deliver to the Collateral Agent an agreement substantially in the form attached hereto as Schedule F being hereinafter referred to collectively as the "*Pledgors*" and individually as a "*Pledgor*") and [REDACTED], as collateral agent (in such capacity, and together with any successors in such capacity, the "*Collateral Agent*") for the Secured Parties (as defined below).

PRELIMINARY STATEMENTS

A. Borrower has requested that certain lenders enter into a Senior Secured Credit Agreement dated as of the date hereof (as the same may be amended or modified from time to time, including amendments and restatements thereof in its entirety, being hereinafter referred to as the "*Credit Agreement*"), pursuant to which the lenders from time to time party to the Credit Agreement (collectively, the "*Lenders*" and individually a "*Lender*") have agreed, subject to certain terms and conditions, to make a Term Loan to Borrower (the Collateral Agent and the Lenders being hereinafter referred to collectively as the "*Secured Parties*" and individually as a "*Secured Party*").

B. As a condition to extending the Term Loan to Borrower under the Credit Agreement, the Secured Parties have required, among other things, that each Pledgor grant to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in the personal property of such Pledgor described herein subject to the terms and conditions hereof.

C. Parent owns, directly or indirectly, certain equity interests in each other Pledgor and each Pledgor will benefit, directly or indirectly, from the Term Loan extended by the Secured Parties to Borrower.

NOW, THEREFORE, for good and valuable consideration, receipt whereof is hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Terms Defined in Credit Agreement. Except as otherwise provided in Section 2 below, all capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement. The terms "Pledgor" and "Pledgors" as used herein shall mean and include the Pledgors collectively and also each individually, with all grants, representations, warranties, and covenants of and by the Pledgors, or any of them, herein contained to constitute joint and several grants, representations, warranties, and covenants of and by the Pledgors; *provided, however*, that unless the context in which the same is used shall otherwise require, any grant, representation, warranty or covenant contained herein related to the Collateral shall be made by each Pledgor only with respect to the Collateral owned by it or represented by such Pledgor as owned by it.

Section 2. Grant of Security Interest in the Collateral. As collateral security for the Secured Obligations defined below, each Pledgor hereby grants to the Collateral Agent for the benefit of the Secured Parties a lien on and security interest in, and acknowledges and agrees that the Collateral Agent has and shall continue to have for the benefit of the Secured Parties, a continuing lien on and security interest in, all right, title, and interest of each Pledgor in certain equity interests of each of its direct Subsidiaries as set forth below, whether now owned or existing or hereafter created, acquired or arising, and in whatever form, including all of the following, except to the extent constituting Excluded Property:

(a) *Stock Collateral.* (i) All shares of the capital stock of each Subsidiary which is a corporation owned or held by such Pledgor and identified on Schedule A, and all substitutions and additions to such shares (the "*Pledged Securities*"); (ii) all dividends, distributions, and sums distributable or payable from, upon or in respect of the Pledged Securities, and (iii) all other rights and privileges incident to the Pledged Securities (all of the foregoing being hereinafter referred to collectively as the "*Stock Collateral*");

(b) *Partnership Interest Collateral.* (i) All partnership or other equity interests in each Subsidiary which is a partnership (whether general or limited) owned or held by such Pledgor and identified on Schedule B (such partnerships being hereinafter referred to collectively as the "*Partnerships*" and individually as a "*Partnership*"), (ii) any and all payments and distributions of whatever kind or character, whether in cash or other property, at any time made, owing or payable to such Pledgor in respect of or on account of its present or hereafter acquired interests in each Partnership, whether due or to become due and whether representing profits, distributions pursuant to complete or partial liquidation or dissolution of any such Partnership, distributions representing the complete or partial redemption of such Pledgor's interest in any such Partnership or the complete or partial withdrawal of such Pledgor from any such Partnership, repayment of capital contributions, payment of management fees or commissions, or otherwise, and the right to receive, receipt for, use, and enjoy all such payments and distributions, and (iii) all other rights and privileges incident to such Pledgor's interest in each Partnership (all of the foregoing being hereinafter collectively called the "*Partnership Interest Collateral*");

(c) *LLC Collateral.* (i) All membership or other equity interests in each Subsidiary which is a limited liability company owned or held by such Pledgor and identified on Schedule C (such limited liability companies being hereinafter referred to collectively as the "*LLCs*" and individually as a "*LLC*"), (ii) any and all payments and distributions of whatever kind or character, whether in cash or other property, at any time made, owing or payable to such Pledgor in respect of or on account of its present or hereafter acquired interests in each LLC, whether due or to become due and whether representing profits, distributions pursuant to complete or partial liquidation or dissolution of any such LLC, distributions representing the complete or partial redemption of such Pledgor's interest in such LLC or the complete or partial withdrawal of such Pledgor from any such LLC, repayment of capital contributions, payment of management fees or commissions, or otherwise, and the right to receive, receipt for, use, and enjoy all such payments and distributions, and (iii) all other rights and privileges incident to such Pledgor's interest in each LLC (all of the foregoing being hereinafter referred to as the "*LLC Collateral*"); and

(d) *Proceeds*. All proceeds of the foregoing;

all of the foregoing being herein sometimes referred to as the "*Collateral*". All terms which are used in this Agreement which are defined in the Uniform Commercial Code of the State of New York as in effect from time to time ("*UCC*") shall have the same meanings herein as such terms are defined in the UCC, unless this Agreement shall otherwise specifically provide.

Section 3. Secured Obligations. This Agreement is made and given to secure, and shall secure, the prompt payment and performance of all Obligations of each Pledgor now or hereafter existing under the Loan Documents (collectively, the "*Secured Obligations*"). Notwithstanding anything in this Agreement to the contrary, the right of recovery against any Pledgor under this Agreement (other than Borrower to which this limitation shall not apply) shall not exceed \$1.00 less than the lowest amount which would render such Pledgor's obligations under this Agreement void or voidable under applicable law, including fraudulent conveyance law.

Section 4. Covenants, Agreements, Representations and Warranties. (a) Each Pledgor hereby represents and warrants to the Secured Parties that:

(i) Each Pledgor is duly organized and validly existing in good standing under the laws of the jurisdiction of its organization. Each Pledgor is the sole and lawful legal, record, and beneficial owner of its Collateral, and has full right, power, and authority to enter into this Agreement and to perform each and all of the matters and things herein provided for. The execution and delivery of this Agreement, and the observance and performance by each Pledgor of each of the matters and things herein set forth, will not (i) contravene or constitute a default under any provision of law or any judgment, injunction, order or decree binding upon any Pledgor or any provision of any Pledgor's Organization Documents or any covenant, indenture or agreement of or affecting any Pledgor or any of its property or (ii) result in the creation or imposition of any lien or encumbrance on any property of any Pledgor except for the lien and security interest granted to the Collateral Agent hereunder.

(ii) Each Pledgor's legal name, jurisdiction of organization, chief executive office, and organizational identification number (if any) are correctly set forth on Schedule D to this Agreement.

(iii) None of the Collateral constitutes margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System).

(iv) The Collateral and every part thereof is and shall be free and clear of all security interests, liens, attachments, levies, and encumbrances of every kind, nature, and description and whether voluntary or involuntary, except for the security interest of the Collateral Agent hereunder.

(b) Each Pledgor hereby covenants and agrees with the Secured Parties that:

(i) No Pledgor shall change its jurisdiction of organization without the Collateral Agent's prior written consent. No Pledgor shall change its legal name or any location set forth on Schedule D hereto without giving 30 days' prior written notice of its intent to do so to the Collateral Agent (provided in all cases such locations shall be within the United States of America).

(ii) Each Pledgor shall warrant and defend the Collateral against any claims and demands of all persons at any time claiming the same or any interest in the Collateral adverse to the Secured Parties.

(iii) Each Pledgor will promptly pay when due all taxes, assessments, and governmental charges and levies upon or against it or its Collateral, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith by appropriate proceedings which prevent attachment of any lien resulting therefrom to, foreclosure on or other realization upon any Collateral and such Pledgor shall have established adequate reserves therefor.

(iv) Each Pledgor agrees it will not, without the Collateral Agent's prior written consent, sell, assign or otherwise dispose of the Collateral or any interest therein.

(v) Each Pledgor agrees to execute and deliver to the Collateral Agent such further agreements, assignments, instruments, and documents, and to do all such other things, as the Collateral Agent may reasonably deem necessary or appropriate to assure the Collateral Agent its lien and security interest hereunder, including, without limitation, such assignments, acknowledgments (including acknowledgments of collateral assignment in the form attached hereto as Schedule E), stock powers, financing statements, instruments, and documents as the Collateral Agent may from time to time require in order to comply with the UCC. Prior to the Closing Date and following the occurrence of an Event of Default, the Collateral Agent may order lien searches from time to time against any Pledgor and the Collateral, and the Pledgors shall promptly reimburse the Collateral Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with such lien searches. In the event for any reason the law of any jurisdiction other than New York becomes or is applicable to the Collateral or any part thereof, or to any of the Secured Obligations, each Pledgor agrees to execute and deliver all such agreements, assignments, instruments, and documents and to do all such other things as the Collateral Agent in its discretion deems necessary or appropriate to preserve, protect, and enforce the lien and security interest of the Collateral Agent under the law of such other jurisdiction.

(vi) If, as and when any Pledgor (x) acquires any Pledged Securities in addition to those listed on Schedule A hereto, (y) acquires any interest in any Partnership in addition to those listed on Schedule B hereto, or (z) acquires any interest in any LLC in addition to those listed on Schedule C hereto, such Pledgor shall furnish to the Collateral Agent a supplement to the relevant Schedule reflecting the additional Collateral subject to this Agreement (provided any Pledgor's failure to do so shall not impair the Collateral Agent's security interest therein).

(vii) On failure of any Pledgor to perform any of the covenants and agreements herein contained, the Collateral Agent may, at its option, and upon prior notice, perform the same and in so doing may expend such sums as the Collateral Agent deems advisable in the performance thereof, including, without limitation, the payment of any taxes, liens, and encumbrances, expenditures made in defending against any adverse claim, and all other expenditures which the Collateral Agent may be compelled to make by operation of law or which Collateral Agent may make by agreement or otherwise for the protection of the security hereof. All such sums and amounts so expended shall be repayable by the Pledgors upon demand, shall constitute additional Secured Obligations secured hereunder, and shall bear interest from the date said amounts are expended at the Default Rate. No such performance of any covenant or agreement by the Collateral Agent on behalf of a Pledgor, and no such advancement or expenditure therefor, shall relieve any Pledgor of any default under the terms of this Agreement or in any way obligate any Secured Party to take any further or future action with respect thereto. The Collateral Agent, in making any payment hereby authorized, may do so according to any bill or statement procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill or statement or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim. The Collateral Agent is hereby authorized to charge any account of any Pledgor maintained with any Secured Party for the amount of such sums and amounts so expended.

Section 5. Special Provisions Re: Stock Collateral.

(a) Each Pledgor has the right to vote the Pledged Securities and there are no restrictions upon the voting rights associated with, or the transfer of, any of the Pledged Securities, except as provided by federal and state, and with respect to the Foreign Subsidiaries, foreign laws applicable to the sale of securities generally and the terms of this Agreement.

(b) The certificates for all shares of the Pledged Securities shall be delivered by the relevant Pledgor to the Collateral Agent duly endorsed in blank for transfer or accompanied by an appropriate assignment or assignments or an appropriate undated stock power or powers, in every case sufficient to transfer title thereto. The Collateral Agent may, at any time after the occurrence of any Event of Default, cause to be transferred into its name or into the name of its nominee or nominees any and all of the Pledged Securities.

(c) The Pledged Securities have been validly issued and, except as described on Schedule A, are fully paid and non-assessable. Except as set forth on Schedule A, there are no outstanding commitments or other obligations of the issuers of any of the Pledged Securities to issue, and no options, warrants or other rights of any individual or entity to acquire, any share of any class or series of capital stock of such issuers. The Pledged Securities listed and described on Schedule A attached hereto constitute, the percentage of the issued and outstanding capital stock of each series and class of the issuers thereof as set forth thereon owned by the relevant Pledgor. Each Pledgor agrees that in the event any such issuer shall issue any additional capital stock of any series or class (whether or not entitled to vote) to such Pledgor or otherwise on account of its ownership interest therein, subject to the limitations set forth in Section 2(a) above, such Pledgor will forthwith pledge and deposit hereunder, or cause to be pledged and deposited hereunder, all such additional shares of such capital stock.

Section 6. Special Provisions Re: Partnership Interest Collateral and LLC Collateral.

(a) Each Pledgor represents and warrants to the Secured Parties that:

(i) each Partnership is a valid and existing entity of the type listed on Schedule B and is duly organized and existing under applicable law; and each LLC is duly organized and existing under applicable law;

(ii) the Partnership Interest Collateral listed and described on Schedule B attached hereto constitutes the percentage of the equity interest in each Partnership set forth thereon owned by the relevant Pledgor; and the LLC Collateral listed and described on Schedule C attached hereto constitutes the percentage of the equity interest in each LLC set forth thereon owned by the relevant Pledgor; and

(iii) the copies of the partnership agreements of each Partnership and the articles of association and operating agreements of each LLC (each such agreement being hereinafter referred to as an "*Organizational Agreement*") heretofore delivered to the Collateral Agent are true and correct copies thereof and have not been amended or modified in any respect.

(b) Each Pledgor agrees that it shall not, without the prior written consent of the Collateral Agent, agree to any amendment or modification to any Organizational Agreement which would in any manner adversely affect or impair the Partnership Interest Collateral or LLC Collateral or reduce or dilute the rights of such Pledgor with respect to any Partnership or LLC, the Equity Interests of which constitute Collateral.

(c) Each Pledgor shall cause each of its Subsidiaries that has issued certificated Equity Interests that are not of a type dealt in or traded on securities exchanges or securities markets to expressly state in its Organizational Agreement that its equity interests are securities governed by Article 8 of the UCC. Each Pledgor agrees that, if permitted by applicable law, the Pledgor's interest in any Partnership or LLC shall at all times be certificated, and the certificates at any time evidencing any Pledgor's interest in any Partnership or any LLC shall be delivered to the Collateral Agent duly endorsed in blank for transfer or accompanied by an appropriate assignment or assignments or an appropriate undated stock power or powers, in every case sufficient to transfer title thereto. The Collateral Agent shall at all times have the right to exchange the certificates representing such Collateral for certificates of smaller or larger denominations.

(d) Each Pledgor has the right to vote its interest in each Partnership and LLC (except as set forth herein) and there are no restrictions upon the voting rights associated with, or the transfer of, any of the Partnership Interest Collateral or LLC Collateral, except as provided by federal and state laws applicable to the sale of securities generally, the terms of any Organizational Agreement under which such person is organized, and the terms of this Agreement, the Security Agreement and the other Loan Documents.

(e) Except as set forth on Schedule C, there are no outstanding commitments or other obligations of any LLC to issue, and no options, warrants or other rights of any individual or entity to acquire, any interest in such LLC.

Section 7. Voting Rights and Dividends. Unless and until an Event of Default hereunder has occurred and is continuing:

(a) Each Pledgor shall be entitled to exercise all voting and/or consensual rights and powers pertaining to the Collateral of such Pledgor, or any part thereof, for all purposes not inconsistent with the terms of this Agreement or any other Loan Document.

(b) Each Pledgor shall be entitled to receive and retain all dividends and distributions in respect of the Collateral which are paid in cash of whatsoever nature; *provided, however,* that such dividends and distributions representing:

(i) stock or liquidating dividends or a distribution or return of capital upon or in respect of the Pledged Securities or any part thereof or resulting from a split-up, revision or reclassification of the Pledged Securities or any part thereof or received in addition to, in substitution of or in exchange for the Pledged Securities or any part thereof as a result of a merger, consolidation or otherwise; or

(ii) distributions in complete or partial liquidation of any Partnership or LLC or the interest of such Pledgor therein;

in each case, shall be paid, delivered or transferred, as appropriate, directly to the Collateral Agent immediately upon the receipt thereof by such Pledgor and may, in the case of cash, be applied by the Collateral Agent to the Secured Obligations in accordance with the terms of Section 8.03 of the Credit Agreement, whether or not the same may then be due or otherwise adequately secured and shall, in the case of all other property, together with any cash received by the Collateral Agent and not applied as aforesaid, be held by the Collateral Agent pursuant hereto as part of the Collateral pledged under and subject to the terms of this Agreement.

(c) In order to permit each Pledgor to exercise such voting and/or consensual rights and powers which it is entitled to exercise under subsection (a) above and to receive such distributions which such Pledgor is entitled to receive and retain under subsection (b) above, the Collateral Agent will, if necessary, upon the written request of such Pledgor, from time to time execute and deliver to such Pledgor appropriate proxies and dividend orders.

Section 8. Power of Attorney. In addition to any other powers of attorney contained herein, each Pledgor hereby appoints the Collateral Agent, its nominee, or any other person whom the Collateral Agent may designate as such Pledgor's attorney-in-fact, with full power and authority upon the occurrence and during the continuation of any Event of Default to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums or properties which may be or become due, payable or distributable in respect of the Collateral or any part thereof, with full power to settle, adjust or compromise any claim thereunder or therefor as fully as such Pledgor could itself do, to endorse or sign the Pledgor's name on any assignments, stock powers or other instruments of transfer and on any checks, notes, acceptances, money orders, drafts, and any other forms of payment or security that may come into the Collateral Agent's possession in connection with its exercise of remedies, and on all documents of satisfaction, discharge or receipt required or requested in connection therewith, and, in its discretion, to file any claim or take any other action or proceeding, either in its own name or in the name of such Pledgor, or otherwise, which the Collateral Agent deems necessary or appropriate to collect or otherwise realize upon all or any part of the Collateral, or effect a transfer thereof, or which may be necessary or appropriate to protect and preserve the right, title, and interest of the Collateral Agent in and to such Collateral and the security intended to be afforded hereby. Each Pledgor hereby ratifies and approves all acts of any such attorney and agrees that neither the Collateral Agent nor any such attorney will be liable for any such acts or omissions nor for any error of judgment or mistake of fact or law other than such person's gross negligence or willful misconduct. The Collateral Agent may file one or more financing statements disclosing its security interest in all or any part of the Collateral without any Pledgor's signature appearing thereon, and each Pledgor also hereby grants the Collateral Agent a power of attorney to execute any such financing statements, and any amendments or supplements thereto, on behalf of such Pledgor without notice thereof to any Pledgor. The foregoing powers of attorney, being coupled with an interest, are irrevocable until the Secured Obligations (other than contingent indemnification and reimbursement obligations not yet accrued and payable) have been fully satisfied and all commitments of the Lenders to extend credit to or for the account of Borrower under the Credit Agreement have expired or otherwise terminated.

Section 9. Defaults and Remedies. (a) The occurrence of any event or the existence of any condition which is specified as an “Event of Default” under the Credit Agreement shall constitute an “*Event of Default*” hereunder.

(b) Upon the occurrence and during the continuation of any Event of Default, the Collateral Agent shall have, in addition to all other rights provided herein or by law, the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Collateral), and further the Collateral Agent may, without demand and, to the extent permitted by applicable law, without advertisement, notice, hearing or process of law, all of which each Pledgor hereby waives to the extent permitted by applicable law, at any time or times, sell and deliver any or all of the Collateral held by or for it at public or private sale, at any securities exchange or broker’s board or at any of the Collateral Agent’s offices or elsewhere, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion. In the exercise of any such remedies, the Collateral Agent may sell the Collateral as a unit even though the sales price thereof may be in excess of the amount remaining unpaid on the Secured Obligations. Also, if less than all the Collateral is sold, the Collateral Agent shall have no duty to marshal or apportion the part of the Collateral so sold as between the Pledgors, or any of them, but may sell and deliver any or all of the Collateral without regard to which of the Pledgors are the owners thereof. In addition to all other sums due any Secured Party hereunder, each Pledgor shall pay the Secured Parties all costs and expenses incurred by the Secured Parties, including reasonable attorneys’ fees and court costs, in obtaining, liquidating or enforcing payment of Collateral or the Secured Obligations or in the prosecution or defense of any action or proceeding by or against any Secured Party or any Pledgor concerning any matter arising out of or connected with this Agreement or the Collateral or the Secured Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or otherwise sent (within the meaning of Section 9-612 of the UCC) to the Pledgors in accordance with Section 13(b) hereof at least 10 days before the time of sale or other event giving rise to the requirement of such notice, *provided, however*, no notification need be given to a Pledgor if such Pledgor has signed, after an Event of Default has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Collateral Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. Any Secured Party may be the purchaser at any such sale. Each Pledgor hereby waives, to the maximum extent permitted by law, all of its rights of redemption from any such sale. The Collateral Agent may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Collateral Agent may further postpone such sale by announcement made at such time and place. The Collateral Agent may sell or otherwise dispose of the Collateral without giving any warranties as to the Collateral or any part thereof, including disclaimers of any warranties of title or the like, and each Pledgor acknowledges and agrees that the absence of such warranties shall not render the disposition commercially unreasonable.

EACH PLEDGOR AGREES THAT IF ANY PART OF THE COLLATERAL IS SOLD AT ANY PUBLIC OR PRIVATE SALE, THE COLLATERAL AGENT MAY ELECT TO SELL ONLY TO A BUYER WHO WILL GIVE FURTHER ASSURANCES, SATISFACTORY IN FORM AND SUBSTANCE TO THE COLLATERAL AGENT, RESPECTING COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, AND A SALE SUBJECT TO SUCH CONDITION SHALL BE DEEMED COMMERCIALY REASONABLE.

EACH PLEDGOR FURTHER AGREES THAT IN ANY SALE OF ANY PART OF THE COLLATERAL, THE COLLATERAL AGENT IS HEREBY AUTHORIZED TO COMPLY WITH ANY LIMITATION OR RESTRICTION IN CONNECTION WITH SUCH SALE AS IT MAY BE ADVISED BY COUNSEL IS NECESSARY IN ORDER TO AVOID ANY VIOLATION OF APPLICABLE LAW (INCLUDING, WITHOUT LIMITATION, COMPLIANCE WITH SUCH PROCEDURES AS MAY RESTRICT THE NUMBER OF PROSPECTIVE BIDDERS AND PURCHASERS AND/OR FURTHER RESTRICT SUCH PROSPECTIVE BIDDERS OR PURCHASERS TO PERSONS WHO WILL REPRESENT AND AGREE THAT THEY ARE PURCHASING FOR THEIR OWN ACCOUNT FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR RESALE OF SUCH COLLATERAL), OR IN ORDER TO OBTAIN ANY REQUIRED APPROVAL OF THE SALE OR OF THE PURCHASER BY ANY GOVERNMENTAL REGULATORY AUTHORITY OR OFFICIAL, AND EACH PLEDGOR FURTHER AGREES THAT SUCH COMPLIANCE SHALL NOT RESULT IN SUCH SALE BEING CONSIDERED OR DEEMED NOT TO HAVE BEEN MADE IN A COMMERCIALY REASONABLE MANNER, NOR SHALL THE COLLATERAL AGENT BE LIABLE OR ACCOUNTABLE TO ANY PLEDGOR FOR ANY DISCOUNT ALLOWED BY REASON OF THE FACT THAT SUCH COLLATERAL IS SOLD IN COMPLIANCE WITH ANY SUCH LIMITATION OR RESTRICTION.

(c) Without in any way limiting the foregoing, upon the occurrence and during the continuation of any Event of Default, all rights of the Pledgors to receive and retain the distributions which they are entitled to receive and retain pursuant to Section 7(b) hereof shall cease and thereupon become vested in the Collateral Agent which, in addition to all other rights provided herein or by law, shall then be entitled solely and exclusively to receive and retain the distributions which the Pledgors would otherwise have been authorized to retain pursuant to Section 7(b) hereof and all rights of the Pledgors to exercise the voting and/or consensual powers which they are entitled to exercise pursuant to Section 7(a) hereof shall cease and thereupon become vested in the Collateral Agent which, in addition to all other rights provided herein or by law, shall then be entitled solely and exclusively to exercise all voting and other consensual powers pertaining to the Collateral and to exercise any and all rights of conversion, exchange or subscription and any other rights, privileges or options pertaining thereto as if the Collateral Agent were the absolute owner thereof, including, without limitation, the right to exchange, at its discretion, the Collateral or any part thereof upon the merger, consolidation, reorganization, recapitalization or other readjustment of the respective issuer thereof or upon the exercise by or on behalf of any such issuer or the Collateral Agent of any right, privilege or option pertaining to the Collateral or any part thereof and, in connection therewith, to deposit and deliver the Collateral or any part thereof with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent may determine. In the event the Collateral Agent in good faith believes any of the Collateral constitutes restricted securities within the meaning of any applicable securities law, any disposition thereof in compliance with such laws shall not render the disposition commercially unreasonable.

(d) In the event the Collateral Agent shall sell or otherwise dispose of all or any part of the Partnership Interest Collateral or LLC Collateral, each Pledgor hereby grants the purchaser of such portion of the Partnership Interest Collateral or LLC Collateral, to the fullest extent of its capacity, the ability (but not the obligation) to become a partner or member in the relevant Partnership or LLC, as the case may be (subject to the approval of the relevant Partnership or LLC in the exercise of its discretion in accordance with its Organizational Agreement and subject to any requirements of applicable law), in the place and stead of such Pledgor. To exercise such right, the purchaser shall give written notice to the relevant Partnership or LLC of its election to become a partner or member in such Partnership or LLC. Following such election and giving of consent by all necessary partners or members of the relevant Partnership or LLC as to the purchaser becoming a partner or member, the purchaser shall have the rights and powers and be subject to the liabilities of a partner or member under the relevant Organizational Agreement and the partnership or limited liability company act governing the Partnership or LLC.

(e) The powers conferred upon the Secured Parties hereunder are solely to protect their interest in the Collateral and shall not impose on them any duties to exercise such powers. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession or control if the Collateral is accorded treatment substantially equivalent to that which the Collateral Agent accords its own property, consisting of similar type assets, it being understood, however, that the Collateral Agent shall have no responsibility for (i) ascertaining or taking any action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters, (ii) taking any necessary steps to preserve rights against any parties with respect to any Collateral, or (iii) initiating any action to protect the Collateral or any part thereof against the possibility of a decline in market value. This Agreement constitutes an assignment of rights only and not an assignment of any duties or obligations of the Pledgors in any way related to the Collateral, and the Collateral Agent shall have no duty or obligation to discharge any such duty or obligation. Neither any Secured Party nor any party acting as attorney for any Secured Party shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than such person's gross negligence or willful misconduct.

(f) Failure by the Collateral Agent to exercise any right, remedy or option under this Agreement or any other agreement between any Pledgor and the Collateral Agent or provided by law, or delay by the Collateral Agent in exercising the same, shall not operate as a waiver; and no waiver shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. The rights and remedies of the Secured Parties under this Agreement shall be cumulative and not exclusive of any other right or remedy which any Secured Party may have. For purposes of this Agreement, an Event of Default shall be construed as continuing after its occurrence until the same is waived in writing by the Collateral Agent.

Section 10. Application of Proceeds. The proceeds of the Collateral at any time received by the Collateral Agent upon the occurrence and during the continuation of any Event of Default shall, when received by the Collateral Agent in cash or its equivalent, be applied by the Collateral Agent in reduction of, or held as collateral security for, the Secured Obligations in accordance with the terms of Section 8.03 of the Credit Agreement. Any surplus remaining after the full payment and satisfaction of the Secured Obligations (other than contingent indemnification and reimbursement obligations not yet accrued and payable) shall be returned to Borrower, as agent for Pledgors, or to whomsoever the Collateral Agent reasonably determines is lawfully entitled thereto.

Section 11. Continuing Agreement. This Agreement shall be a continuing agreement in every respect and shall remain in full force and effect until all of the Secured Obligations (other than contingent indemnification and reimbursement obligations not yet accrued and payable), both for principal and interest, have been fully paid and satisfied and the commitments of the Lenders to extend credit to or for the account of Borrower under the Credit Agreement shall have expired or otherwise terminated. Upon such termination of this Agreement, the Collateral Agent shall, upon the request and at the expense of the Pledgors, forthwith release all its liens and security interests hereunder and shall return to the Pledgors any Collateral held by the Collateral Agent.

Section 12. The Collateral Agent. In acting under or by virtue of this Agreement, the Collateral Agent shall be entitled to all the rights, authority, privileges, and immunities provided in the Credit Agreement, all of which provisions of said Credit Agreement (including, without limitation, Article IX thereof) are incorporated by reference herein with the same force and effect as if set forth herein in their entirety. The Collateral Agent hereby disclaims any representation or warranty to the Secured Parties or any other holders of the Secured Obligations concerning the perfection of the liens and security interests granted hereunder or in the value of any of the Collateral.

Section 13. Miscellaneous. (a) This Agreement cannot be changed or terminated orally. This Agreement shall create a continuing lien on and security interest in the Collateral and shall be binding upon each Pledgor, its successors and assigns, and shall inure, together with the rights and remedies of the Secured Parties hereunder, to the benefit of the Secured Parties and their successors and permitted assigns; *provided, however*, that no Pledgor may assign its rights or delegate its duties hereunder without the Collateral Agent's prior written consent. Without limiting the generality of the foregoing, and subject to the provisions of the Credit Agreement, any Lender may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other person that is an Eligible Assignee, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise.

(b) All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Schedule 10.02 of the Credit Agreement. All communications and notices hereunder to each Pledgor shall be given to it in care of Borrower at Borrower's address set forth in Schedule 10.02 of the Credit Agreement.

(c) In the event and to the extent that any provision hereof shall be deemed to be invalid or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court, this Agreement shall to such extent be construed as not containing such provision, but only as to such jurisdictions where such law or interpretation is operative, and the invalidity or unenforceability of such provision shall not affect the validity of any remaining provision hereof, and any and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect. Without limiting the generality of the foregoing, in the event that this Agreement shall be deemed to be invalid or otherwise unenforceable with respect to any Pledgor, such invalidity or unenforceability shall not affect the validity of this Agreement with respect to the other Pledgors.

(d) The lien and security interest herein created and provided for stand as direct and primary security for the Secured Obligations of Borrower arising under or otherwise relating to the Credit Agreement as well as for the other Secured Obligations secured hereby. No application of any sums received by the Secured Parties in respect of the Collateral or any disposition thereof to the reduction of the Secured Obligations or any part thereof shall in any manner entitle any Pledgor to any right, title or interest in or to the Secured Obligations or any collateral security therefor, whether by subrogation or otherwise, unless and until all Secured Obligations (other than contingent indemnification and reimbursement obligations not yet accrued and payable) have been fully paid and satisfied and all commitments to extend credit to or for the account of Borrower under the Credit Agreement have expired or otherwise terminated. Each Pledgor acknowledges and agrees that the lien and security interest hereby created and provided for are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of any Secured Party or any other holder of any of the Secured Obligations, and without limiting the generality of the foregoing, the lien and security interest hereof shall not be impaired by any acceptance by any Secured Party or any other holder of any of the Secured Obligations of any other security for or guarantors upon any Secured Obligations or by any failure, neglect or omission on the part of any Secured Party or any other holder of any of the Secured Obligations to realize upon or protect any of the Secured Obligations or any collateral security therefor. The lien and security interest hereof shall not in any manner be impaired or affected by (and the Secured Parties, without notice to anyone, are hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Obligations or of any collateral security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. The Secured Parties may at their discretion at any time grant credit to Borrower without notice to the other Pledgors in such amounts and on such terms as the Secured Parties may elect without in any manner impairing the lien and security interest hereby created and provided for. In order to realize hereon and to exercise the rights granted the Secured Parties hereunder and under applicable law, there shall be no obligation on the part of any Secured Party or any other holder of any of the Secured Obligations at any time to first resort for payment to Borrower or any other Pledgor or to any guaranty of the Secured Obligations or any portion thereof or to resort to any other collateral security, property, liens or any other rights or remedies whatsoever, and the Secured Parties shall have the right to enforce this Agreement as against any Pledgor or any of its Collateral irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

(e) In the event the Secured Parties shall at any time in their discretion permit a substitution of Pledgors hereunder or a party shall wish to become a Pledgor hereunder, such substituted or additional Pledgor shall, upon executing an agreement in the form attached hereto as Schedule F, become a party hereto and be bound by all the terms and conditions hereof to the same extent as though such Pledgor had originally executed this Agreement and, in the case of a substitution, in lieu of the Pledgor being replaced. Any such agreement shall contain information as to such Pledgor necessary to update Schedules A, B, C, and D with respect to it. No such substitution shall be effective absent the written consent of Collateral Agent nor shall it in any manner affect the obligations of the other Pledgors hereunder.

(f) This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterpart signature pages, each constituting an original, but all together one and the same instrument. Each Pledgor acknowledges that this Agreement is and shall be effective upon its execution and delivery by such Pledgor to the Collateral Agent, and it shall not be necessary for the Collateral Agent to execute this Agreement or any other acceptance hereof or otherwise to signify or express its acceptance hereof.

(g) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to principles of conflicts of law). The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

(h) Each Pledgor hereby submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York state court sitting in New York County, for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Each Pledgor irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient form. EACH PLEDGOR AND, BY ACCEPTING THE BENEFITS OF THIS AGREEMENT, EACH SECURED PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each Pledgor has caused this Agreement to be duly executed and delivered as of the date first above written.

PLEDGORS:

LOGICMARK, LLC, as a Pledgor

By: _____
Name: _____
Title: _____

NXT-ID, INC., as a Pledgor

By: _____
Name: _____
Title: _____

3D-ID, LLC, as a Pledgor

By: _____
Name: _____
Title: _____

SIGNATURE PAGE TO SECURITIES PLEDGE AGREEMENT

Acknowledged and agreed to as of the date first above written.

██████████, as Collateral Agent

By: _____
Name: _____
Title: _____

EXECUTION VERSION

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*IP Security Agreement*") dated May 3, 2019, is made by the Persons listed on the signature pages hereof (collectively, the "*Grantors*") in favor of [REDACTED], as collateral agent (the "*Collateral Agent*") for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, LOGICMARK, LLC., a Delaware limited liability company (the "*Borrower*"), [REDACTED], as Administrative Agent and Collateral Agent, and each Lender from time to time party thereto, have entered into that certain Senior Secured Credit Agreement dated as of May 3, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*"). Terms defined in the Credit Agreement and not otherwise defined herein are used herein as defined in the Credit Agreement.

WHEREAS, as a condition precedent to the making of the Term Loan by the Lenders under the Credit Agreement, each Grantor has executed and delivered that certain Security Agreement dated as of the date hereof made by the Grantors to the Collateral Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Security Agreement*").

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office and other governmental authorities, as applicable.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees as follows:

SECTION 1. *Grant of Security*. Each Grantor hereby grants to the Collateral Agent for the ratable benefit of the Secured Parties a security interest in all of such Grantor's right, title and interest in and to the following (the "*Collateral*"):

(i) the patents and patent applications set forth in Schedule A hereto (the "*Patents*");

(ii) the trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications or the marks that are the subject thereof under applicable federal law), together with the goodwill symbolized thereby (the "*Trademarks*");

(iii) the copyright registrations and applications and copyright licenses set forth in Schedule C hereto (the “*Copyrights*”);

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(v) any and all income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements, dilutions, misappropriations, violations, misuses or breaches thereof, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages.

SECTION 2. *Security for Obligations.* The grant of a security interest in the Collateral by each Grantor under this IP Security Agreement secures the payment of all Obligations of such Grantor now or hereafter existing under or in respect of the Loan Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise, including, without limitation, obligations under the Guaranty, as applicable.

SECTION 3. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer, as applicable, record this IP Security Agreement.

SECTION 4. *Execution in Counterparts.* This IP Security Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this IP Security Agreement by facsimile or an electronic transmission of a .pdf copy thereof shall be effective as delivery of an original executed counterpart of this IP Security Agreement.

SECTION 5. *Grants, Rights and Remedies.* This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. *Governing Law.* This IP Security Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[signature page follows]

IN WITNESS WHEREOF, each Grantor has caused this IP Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

LOGICMARK, LLC, as a Grantor

By: _____
Name: _____
Title: _____

NXT-ID, INC., as a Grantor

By: _____
Name: _____
Title: _____

3D-ID, LLC, as a Grantor

By: _____
Name: _____
Title: _____

GUARANTY AGREEMENT

By

NXT-ID, Inc.

AND

3D-ID, LLC

█

and

█

as Administrative Agent

Dated as of May 3, 2019

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GUARANTY AGREEMENT

GUARANTY AGREEMENT (this “*Agreement*”) dated as of May 3, 2019, among NXT-ID, INC., a Delaware corporation (“*Parent*”), 3D-ID, LLC, a Florida limited liability company, and each of the subsidiaries of Parent that is a party hereto or may become party hereto pursuant to Section 8(b) below (collectively, the “*Guarantors*”) and ██████, as administrative agent (in such capacity, and together with any successors in such capacity, the “*Administrative Agent*”) for the Secured Parties (as defined in the Credit Agreement referred to below).

Reference is made to the Senior Secured Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among LOGICMARK, LLC, a Delaware limited liability company, (the “*Borrower*”), the Lenders party thereto from time to time and ██████, as Administrative Agent and Collateral Agent. Terms used herein without definition shall have the meanings assigned to such terms in the Credit Agreement.

The Lenders have agreed to make a Term Loan to the Borrower, pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement. Each of the Guarantors acknowledges that it will derive substantial direct and indirect economic benefit from the Term Loan made by the Lenders. The obligation of the Lenders to make the Term Loan is conditioned on, among other things, the execution and delivery by the Guarantors of a Guaranty Agreement in the form hereof. As consideration therefor and in order to induce the Lenders to make the Term Loan, the Guarantors are willing to execute this Agreement.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lenders to make the Term Loan under the Credit Agreement, each Guarantor, jointly and severally with each other Guarantor, hereby agrees as follows:

Section 1. *Guaranty; Limitation of Liability.* (a) Each Guarantor hereby absolutely, unconditionally and irrevocably guarantees, jointly and severally, the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party now or hereafter existing under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums (including, without limitation, any Prepayment Premium), fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the “*Guaranteed Obligations*”), and agrees, subject to and without limitation on the Credit Agreement, to pay any and all costs and expenses (including, without limitation, reasonable and documented fees and expenses of counsel, *provided* that if no Event of Default has occurred and is continuing, such costs and expenses of counsel shall be limited to a single firm of primary outside counsel and, if necessary, one local counsel in each applicable jurisdiction, for the Secured Parties) incurred by the Administrative Agent or any other Secured Party in enforcing any rights under this Agreement or any other Loan Document, in each case as and to the extent payable under Section 10.04 the Credit Agreement (as if the obligations of the Borrower under such Section were obligations of such Guarantor). Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to any Secured Party under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party.

(b) Each Guarantor, and by its acceptance of this Agreement, the Administrative Agent and each other Secured Party, hereby confirms that it is the intention of all such Persons that this Agreement and the Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law (as hereinafter defined), the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Agreement and the Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Administrative Agent, the other Secured Parties and the Guarantors hereby irrevocably agree that the Obligations of each Guarantor under this Agreement at any time shall be limited to the maximum amount as will result in the Obligations of such Guarantor under this Agreement not constituting a fraudulent transfer or conveyance under applicable foreign, federal or state law. For purposes hereof, "*Bankruptcy Law*" means any proceeding under Debtor Relief Laws.

(c) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Secured Party under this Agreement or any other guaranty, such Guarantor will contribute, to the extent necessary and to the maximum extent permitted by law, such amounts to each other Guarantor and each other guarantor so as to maximize (up to but not exceeding the payment amount required) the aggregate amount paid to the Secured Parties under or in respect of the Loan Documents.

Section 2. *Guaranty Absolute*. Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any applicable law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Secured Party with respect thereto. The obligations of each Guarantor under or in respect of this Agreement are independent of the Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Agreement, irrespective of whether any action is brought against the Borrower or any other Loan Party or whether the Borrower or any other Loan Party is joined in any such action or actions. This Agreement is a guaranty of payment when due, and not of collection. The liability of each Guarantor under this Agreement shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives (to the extent permitted by applicable Laws) any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other Obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of any Secured Party to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to such Secured Party (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information);

(g) the failure of any other Person to execute or deliver this Agreement, any Guaranty Supplement (as hereinafter defined) or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the Guaranteed Obligations; or

(h) any other circumstance or any existence of or reliance on any representation by any Secured Party that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety, other than irrevocable payment in full in cash of the Obligations (other than (A) contingent indemnification and reimbursement obligations not yet accrued and payable and (B) any other obligation (including a guarantee) that is contingent in nature and that has not yet accrued).

This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by any Secured Party or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise, all as though such payment had not been made.

Section 3. *Waivers and Acknowledgments.* (a) Each Guarantor hereby unconditionally and irrevocably waives, to the extent permitted by applicable Laws, promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the Guaranteed Obligations and this Agreement and any requirement that any Secured Party protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Agreement and acknowledges that this Agreement is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives, to the extent permitted by applicable Laws, (i) any defense arising by reason of any claim or defense based upon an election of remedies by any Secured Party that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of setoff or counterclaim against or in respect of the Obligations of such Guarantor hereunder.

(d) Each Guarantor acknowledges that the Administrative Agent may, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Agreement, foreclose under any mortgage by nonjudicial sale (to the extent such sale is permitted by applicable Laws), and each Guarantor hereby waives, to the extent permitted by applicable Laws, any defense to the recovery by the Administrative Agent and the other Secured Parties against such Guarantor of any deficiency after such nonjudicial sale and any defense or benefits that may be afforded by applicable Laws.

(e) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of any Secured Party to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by such Secured Party.

(f) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 2 and this Section 3 are knowingly made in contemplation of such benefits.

Section 4. *Subrogation*. Until the Obligations are indefeasibly satisfied in full, each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower, any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Agreement or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of any Secured Party against the Borrower, any other Loan Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Borrower, any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim, remedy or right, unless and until the occurrence of the Termination Date. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Agreement, such amount shall be received and held in trust by such Guarantor for the benefit of the Secured Parties, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Administrative Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Agreement thereafter arising. If any Guarantor shall make payment to any Secured Party of all or any part of the Guaranteed Obligations and the Termination Date has occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary or reasonably requested by such Guarantor to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Agreement.

Section 5. *Payments Free and Clear of Taxes, Etc.* Any and all payments by or on account of any obligation of any Guarantor hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes or Other Taxes on the same terms and to the same extent that payments by the Borrower are required to be made free and clear of Taxes and Other Taxes pursuant to Section 3.01 of the Credit Agreement.

Section 6. *Representations and Warranties*. Each Guarantor hereby makes each representation and warranty made in the Loan Documents by the Borrower with respect to such Guarantor and each Guarantor hereby further represents and warrants that such Guarantor has, independently and without reliance upon any Secured Party and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and each other Loan Document to which it is or is to be a party, and such Guarantor has established adequate means of obtaining from each other Loan Party on a continuing basis information pertaining to, and is now and on a continuing basis will be familiar with, the business, condition (financial or otherwise), operations, performance, properties and prospects of such other Loan Party.

Section 7. *Covenants*. Each Guarantor covenants and agrees that, until the Termination Date has occurred, such Guarantor will perform and observe all of the terms, covenants and agreements set forth in the Loan Documents on its part to be performed or observed or that the Borrower has agreed in the Loan Documents to cause such Guarantor to perform or observe.

Section 8. *Amendments, Guaranty Supplements, Etc.* (a) No amendment or waiver of any provision of this Agreement and no consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent, and shall otherwise be in accordance with Section 10.01 of the Credit Agreement.

(b) Pursuant to Section 6.11 of the Credit Agreement, certain Subsidiaries of Parent may be required, after the date hereof, to enter into this Agreement as a Guarantor. Upon the execution and delivery by any such Person of a guaranty supplement in substantially the form of Exhibit A hereto (each, a “*Guaranty Supplement*”), (i) such Person shall be referred to as an “*Additional Guarantor*” and shall become and be a Guarantor hereunder, and each reference in this Agreement to a “*Guarantor*” shall also mean and be a reference to such Additional Guarantor, and each reference in any other Loan Document to a “*Guarantor*” or a “*Loan Party*” shall also mean and be a reference to such Additional Guarantor, and (ii) each reference herein to “*this Agreement*”, “*hereunder*”, “*hereof*” or words of like import referring to this Agreement, and each reference in any other Loan Document to the “*Guaranty*”, “*thereunder*”, “*thereof*” or words of like import referring to this Agreement, shall mean and be a reference to this Agreement as supplemented by such Guaranty Supplement. Each such Additional Guarantor shall also execute and deliver a Security Agreement Supplement to the extent required by the Loan Documents.

Section 9. *Notices, Etc.* All notices and other communications provided for hereunder shall be in writing (including facsimile transmission, and, to the extent permitted under Section 10.02(e) of the Credit Agreement, in an electronic medium as specified therein) and mailed, faxed or otherwise delivered to it in accordance with Section 10.02 of the Credit Agreement, if to any Guarantor, addressed to it in care of the Borrower at the Borrower’s address specified in Schedule 10.02 of the Credit Agreement, if to any Agent or any Lender, at its address specified in Schedule 10.02 of the Credit Agreement or, as to any party, at such other address as shall be designated by such party in a written notice to each other party. All such notices and other communications shall, when mailed, faxed or delivered by electronic mail, be effective when deposited in the mails, transmitted by facsimile or delivered by electronic mail, respectively. Delivery by facsimile or by electronic transmission of a .pdf copy of an executed counterpart of a signature page to any amendment or waiver of any provision of this Agreement or of any Guaranty Supplement to be executed and delivered hereunder shall be effective as delivery of an original executed counterpart thereof.

Section 10. *No Waiver; Remedies.* No failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 11. *Right of Setoff.* Upon the occurrence and during the continuance of any Event of Default, each Agent, each Lender and each of their respective Affiliates is hereby authorized upon prior written notice to each applicable Guarantor at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) (other than in accounts used exclusively for payroll or employee benefits and in other trust or fiduciary accounts) at any time held and other indebtedness at any time owing by such Agent, such Lender or such Affiliate to or for the credit or the account of any Guarantor against any and all of the Obligations of such Guarantor now or hereafter existing under the Loan Documents, irrespective of whether such Agent or such Lender shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be unmaturing; *provided, however*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Agent and each Lender and their respective Affiliates under this Section 11 are in addition to other rights and remedies (including, without limitation, other rights of setoff) that such Agent, such Lender and their respective Affiliates may have.

Section 12. *Indemnification.* (a) Without limitation on any other Obligations of any Guarantor or remedies of the Secured Parties under this Agreement, each Guarantor shall, to the fullest extent permitted by law, indemnify and hold harmless each Agent-Related Person, each Secured Party and each of their respective Affiliates, directors, officers, employees, counsel, agents, trustees, and attorneys-in-fact (collectively the “*Indemnitees*”) from and against any and all liabilities, obligations, losses, taxes, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with or resulting from this Agreement (including, without limitation, enforcement of this Agreement), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee and whether brought by an Indemnitee, a third party or by the Borrower or any other Loan Party or any of the Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereby are consummated, *provided*, that, such indemnity shall not, as to any Indemnitee, be available to the extent such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) Each Guarantor hereby also agrees that none of the Indemnitees shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any of the Guarantors or any of their respective Affiliates or any of their respective officers, directors, employees, agents and advisors, and each Guarantor hereby agrees not to assert any claim against any Indemnitee on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Facility, the actual or proposed use of the proceeds of the Term Loan, the Loan Documents or any of the transactions contemplated by the Loan Documents, in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee and whether brought by an Indemnitee, a third party or by the Borrower or any other Loan Party or any of the Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereby are consummated, *provided*, that, such indemnity shall not, as to any Indemnitee, be available (and the foregoing agreements of each Guarantor not to assert any such claims) to the extent such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from or arose out of the gross negligence or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction.

(c) Without prejudice to the survival of any of the other agreements of any Guarantor under this Agreement or any of the other Loan Documents, the agreements and obligations of each Guarantor contained in Section 1(a) (with respect to enforcement expenses), Section 2 (with respect to the last sentence thereof), Section 5 and this Section 12 shall survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Agreement and the resignation or removal of any Agent.

Section 13. *Subordination.* Each Guarantor hereby subordinates any and all debts, liabilities and other Obligations owed to such Guarantor by each other Loan Party (the “*Subordinated Obligations*”) to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 13:

(a) *Prohibited Payments, Etc.* Except during the continuance of an Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), and subject to the terms of the Credit Agreement, each Guarantor may receive payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), however, unless the Administrative Agent shall otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations, other than the filing of proofs of claim or other similar requirements to preserve its rights as a creditor.

(b) *Prior Payment of Guaranteed Obligations.* In any proceeding under any Bankruptcy Law relating to any other Loan Party, each Guarantor agrees that the Secured Parties shall be entitled to receive payment in full in cash of all Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Bankruptcy Law, whether or not constituting an allowed claim in such proceeding (“*Post Petition Interest*”)) before such Guarantor receives payment of any Subordinated Obligations.

(c) *Turn-Over.* After the occurrence and during the continuance of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), each Guarantor shall, if the Administrative Agent so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Secured Parties and deliver such payments to the Administrative Agent on account of the Guaranteed Obligations (including all Post Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Agreement.

(d) *Administrative Agent Authorization.* After the occurrence and during the continuance of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), the Administrative Agent is authorized and empowered (but without any obligation to so do), (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, Subordinated Obligations and to apply any amounts received thereon to the Guaranteed Obligations (including any and all Post Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, Subordinated Obligations and (B) to pay any amounts received on such obligations to the Administrative Agent for application to the Guaranteed Obligations (including any and all Post Petition Interest).

Section 14. *Continuing Guaranty; Assignments under the Credit Agreement.* This Agreement is a continuing guaranty and shall (a) remain in full force and effect until the Termination Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, transferees and permitted assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Secured Party may assign or otherwise transfer all or any portion of its rights and obligations under the Credit Agreement (including, without limitation, all or any portion of its Term Loan Commitments, the Term Loan owing to it and the Note or Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party herein or otherwise, in each case as and to the extent provided in and in accordance with the requirements of Section 10.07 of the Credit Agreement. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of each Lender.

Section 15. *Execution in Counterparts.* This Agreement or any Guaranty Supplement and each amendment, waiver and consent with respect hereto may be executed in any number of counterparts and by different parties thereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement or any Guaranty Supplement by facsimile or an electronic transmission of a .pdf copy thereof shall be effective as delivery of an original executed counterpart of this Agreement or any Guaranty Supplement.

Section 16. *Governing Law; Jurisdiction; Waiver of Jury Trial, Etc.* (a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE UNDERSIGNED, THE SECURED PARTIES OR THE AGENTS OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE UNDERSIGNED CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE UNDERSIGNED IRREVOCABLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED HERETO OR THERETO.

(c) WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE UNDERSIGNED, THE SECURED PARTIES, THE AGENTS OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH OF THE UNDERSIGNED HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY OF THE UNDERSIGNED, THE SECURED PARTIES OR THE AGENTS MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 16(c) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE UNDERSIGNED TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[Signature pages follow.]

IN WITNESS WHEREOF, each Guarantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

NXT-ID, INC., as a Guarantor

By: _____

Name:

Title:

3D-ID, LLC, as a Guarantor

By: _____

Name:

Title:

SIGNATURE PAGE
GUARANTY AGREEMENT

Acknowledged and accepted:

████████████████████, as Administrative Agent

By: _____

Name:

Title:

SIGNATURE PAGE
GUARANTY AGREEMENT

**Exhibit A
To The
Guaranty Agreement**

SUPPLEMENT NO. _____ (this "*Supplement*") dated as of _____, 20____, to the Guaranty Agreement dated as of May 3, 2019 (as the same may be amended, supplemented or otherwise modified from time to time, the "*Guaranty*"), among NXT-ID, INC., a Delaware corporation ("*Parent*"), 3D-ID, LLC, a Florida limited liability company, and each of the subsidiaries of Parent that is a party thereto or may become party thereto pursuant to Section 8(b) of the Guaranty (collectively, the "*Guarantors*") and _____, as administrative agent (in such capacity, and together with any successors in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Credit Agreement referred to below). Terms used herein without definition shall have the meanings assigned to such terms in the Guaranty.

A. Reference is made to that certain Senior Secured Credit Agreement dated as of May 3, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among LOGICMARK, LLC, a Delaware limited liability company, (the "*Borrower*"), the Lenders party thereto from time to time and _____, as Administrative Agent and Collateral Agent.

B. The Guarantors have entered into the Guaranty in order to induce the Lenders to make the Term Loan. Pursuant to Section 6.11 of the Credit Agreement and the requirements of the "Collateral and Guarantee Requirement" set forth in the Credit Agreement (and subject to certain limitations provided therein) (i) Parent and each Subsidiary of Parent (excluding the Borrower) existing on the Closing Date and (ii) any Person that becomes a Subsidiary of Parent after the Closing Date is required to enter into the Guaranty as a Guarantor. Each undersigned Subsidiary of Parent is executing this Supplement in accordance with the requirements of the Credit Agreement and the Guaranty to become a Guarantor under the Guaranty as consideration for the Term Loan previously made.

Accordingly, the Administrative Agent and the undersigned agree as follows:

Section 1. *Guaranty; Limitation of Liability.* (a) The undersigned hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on the date of any required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party now or hereafter existing under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums (including, without limitation, any Prepayment Premium), fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the "*Guaranteed Obligations*"), and agrees to pay any, subject to the Credit Agreement, and all costs and expenses (including, without limitation, reasonable and document incurred by the Administrative Agent or any other Secured Party in enforcing any rights under this Guaranty Supplement, the Guaranty or any other Loan Document, in each case as and to the extent payable under Section 10.04 the Credit Agreement (as if the obligations of the Borrower under such Section were obligations of the undersigned). Without limiting the generality of the foregoing, the undersigned's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to any Secured Party under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party.

(b) The undersigned, and by its acceptance of this Guaranty Supplement, the Administrative Agent and each other Secured Party, hereby confirms that it is the intention of all such Persons that this Guaranty Supplement, the Guaranty and the Obligations of the undersigned hereunder and thereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty Supplement, the Guaranty and the Obligations of the undersigned hereunder and thereunder. To effectuate the foregoing intention, the Administrative Agent, the other Secured Parties and the undersigned hereby irrevocably agree that the Obligations of the undersigned under this Guaranty Supplement and the Guaranty at any time shall be limited to the maximum amount as will result in the Obligations of the undersigned under this Guaranty Supplement and the Guaranty not constituting a fraudulent transfer or conveyance under applicable foreign, federal or state law.

(c) The undersigned hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Secured Party under this Guaranty Supplement, the Guaranty or any other guaranty, the undersigned will contribute, to the extent necessary and to the maximum extent permitted by applicable law, such amounts to each other Guarantor and each other guarantor so as to maximize (up to but not exceeding the payment amount required) the aggregate amount paid to the Secured Parties under or in respect of the Loan Documents.

Section 2. *Obligations Under the Guaranty.* The undersigned hereby agrees, as of the date first above written, to be bound as a Guarantor by all of the terms and conditions of the Guaranty to the same extent as each of the other Guarantors thereunder. The undersigned further agrees, as of the date first above written, that each reference in the Guaranty to an “*Additional Guarantor*” or a “*Guarantor*” shall also mean and be a reference to the undersigned, and each reference in any other Loan Document to a “*Guarantor*” or a “*Loan Party*” shall also mean and be a reference to the undersigned.

Section 3. *Representations and Warranties.* The undersigned hereby makes each representation and warranty set forth in Section 6 of the Guaranty to the same extent as each other Guarantor.

Section 4. *Delivery by Facsimile; Electronic Transmission.* Delivery of an executed counterpart of a signature page to this Guaranty Supplement by facsimile or electronic transmission of a .pdf copy shall be effective as delivery of an original executed counterpart of this Guaranty Supplement.

Section 5. *Governing Law; Jurisdiction; Waiver of Jury Trial, Etc.* (a) This Guaranty Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS GUARANTY SUPPLEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE UNDERSIGNED, THE SECURED PARTIES OR THE AGENT OR ANY OF THEM WITH RESPECT TO THIS GUARANTY SUPPLEMENT OR ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY SUPPLEMENT, EACH OF THE UNDERSIGNED CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE UNDERSIGNED IRREVOCABLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

(c) WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS GUARANTY SUPPLEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS GUARANTY SUPPLEMENT OR ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE UNDERSIGNED, THE SECURED PARTIES, THE AGENTS OR ANY OF THEM WITH RESPECT TO THIS GUARANTY SUPPLEMENT OR ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND THE UNDERSIGNED HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY OF THE UNDERSIGNED, THE SECURED PARTIES OR THE AGENTS MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 5(c) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE UNDERSIGNED TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[Signature pages follow.]

Very truly yours,

[NAME OF ADDITIONAL GUARANTOR]

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
SUPPLEMENT NO. [] TO GUARANTY AGREEMENT

Acknowledged and accepted:

 as Administrative Agent

By: _____

Name:

Title:

SIGNATURE PAGE

SUPPLEMENT NO. [] TO GUARANTY AGREEMENT

**CERTIFICATION
OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Gino M. Pereira, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Nxt-ID, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2019

By: /s/ Gino M. Pereira
Gino M. Pereira
Chief Executive Officer
(Duly Authorized Officer and
Principal Executive Officer)

**CERTIFICATION
OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Vincent S. Miceli, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Nxt-ID, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2019

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Principal Financial Officer
(Duly Authorized Officer and
Principal Financial Officer)

**CERTIFICATION
OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Nxt-ID, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Gino M. Pereira, Chief Executive Officer of Nxt-ID, Inc., certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 15, 2019

By: /s/ Gino M. Pereira
Gino M. Pereira
Chief Executive Officer
(Duly Authorized Officer and
Principal Executive Officer)

**CERTIFICATION
OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Nxt-ID, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Vincent S. Miceli, Vice President and Chief Financial Officer of Nxt-ID, Inc., certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 15, 2019

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Principal Financial Officer
(Duly Authorized Officer and
Principal Financial Officer)