AMENDMENT NO. 1
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

McAfee Corp.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

7372
(Primary Standard Industrial Classification Code Number)

84-2467341
(I.R.S. Employer Identification Number)

6220 America Center Drive
San Jose, CA 95002
(866) 622-3911

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Peter Leav
Chief Executive Officer
McAfee Corp.
6220 America Center Drive
San Jose, CA 95002
(866) 622-3911

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to public: As soon as practicable after this Registration Statement is declared effective.

Calculating Rule 457(o) under the Securities Act of 1933.

Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.
The information in this prospectus is not complete and may be changed. We and the selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to completion, dated October 7, 2020

PRELIMINARY PROSPECTUS

SHARES

McAfee Corp.

CLASS A COMMON STOCK

$ per share

This is the initial public offering of shares of Class A common stock of McAfee Corp. We are selling shares of our Class A common stock. The selling stockholders are selling an additional shares of our Class A common stock. We will not receive any of the proceeds from the sale of shares by the selling stockholders. We currently expect the initial public offering price to be between $ and $ per share.

Prior to this offering, there has been no public market for shares of our Class A common stock. We have applied for listing of our Class A common stock on The Nasdaq Global Select Market (the “Exchange”) under the symbol “MCFE”.

We will use a portion of the net proceeds that we receive from this offering to directly or indirectly purchase newly issued common units, which we refer to as “LLC Units,” in Foundation Technology Worldwide LLC. We refer to the holders of LLC Units following the closing of this offering (other than the Company and our subsidiaries) as “Continuing LLC Owners.” We will use the remaining net proceeds that we receive from this offering to directly or indirectly purchase issued and outstanding LLC Units and an equal number of shares of Class B common stock from certain Continuing LLC Owners (or LLC Units and an equal number of shares of Class B common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock at a purchase price per unit equal to the initial public offering price per share of Class A common stock, less underwriting discounts and commissions. We refer to those of our pre-initial public offering (“pre-IPO”) investors and certain of their affiliates who will receive shares of Class A common stock in connection with the Reorganization Transactions (as defined herein) and who do not hold LLC Units as “Continuing Corporate Owners,” and together with the Continuing LLC Owners, as “Continuing Owners.” We refer to the holders of management incentive units of Foundation Technology Worldwide LLC (“MIUs”) as well as members of management who elect to exchange their MIUs for Class A common stock as “Management Owners.”

We have two classes of authorized common stock: the Class A common stock offered hereby and Class B common stock, each of which is entitled to one vote per share. The Continuing LLC Owners will own all of our shares of Class B common stock, on a one-to-one basis with the number of LLC Units they own (except that Management Owners will not receive shares of Class B common stock in connection with their exchange of MIUs for LLC Units). Each LLC Unit will be exchangeable for cash or (at our option) for one share of Class A common stock, and we will cancel a share of Class B common stock held by the exchanging member in connection therewith (to the extent the exchanging member has shares of Class B common stock). Immediately following this offering, the holders of shares of our Class A common stock issued in this offering collectively will hold % of the economic interests in us and % of the voting power in us, the Management Owners, through their ownership of Class A common stock and MIUs, collectively will hold % of the economic interests in us and % of the voting power in us, the Continuing Corporate Owners, through their ownership of shares of Class A common stock, collectively will hold % of the economic interests in us and % of the voting power in us, and the Continuing LLC Owners, through their ownership of shares of Class A common stock and all of the outstanding Class B common stock, collectively will hold % of the economic interest in us and the remaining % of the voting power in us. We will be a holding company, and upon consummation of this offering and the application of proceeds therefrom, our principal asset will be the LLC Units we directly and indirectly hold, representing an aggregate % economic interest in Foundation Technology Worldwide LLC. Management Owners, through their ownership of MIUs, will own a % economic interest in Foundation Technology Worldwide LLC, and the Continuing LLC Owners through their ownership of LLC Units will own the remaining % economic interest in Foundation Technology Worldwide LLC.

Following this offering, we will be a “controlled company” within the meaning of the corporate governance rules of the Exchange. See “Management—Board Composition and Director Independence.”

Investing in shares of our Class A common stock involves risk. See “Risk Factors” beginning on page 29.

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(1) We have agreed to reimburse the underwriters for certain expenses in connection with this offering. See "Underwriters (Conflicts of Interest)" for additional information regarding underwriting compensation.

To the extent that the underwriters sell more than shares of our Class A common stock, we and the selling stockholders have granted the underwriters the option to purchase up to additional shares of our Class A common stock at the initial public offering price less the underwriting discount within 30 days from the date of this prospectus. Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of our Class A common stock to our investors on or about .

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To the contrary is a criminal offense.
Our Pledge

We dedicate ourselves to keeping the world safe from cyberthreats. Threats that are no longer limited to the confines of our computers, but are prevalent in every aspect of our connected world. We will not rest in our quest to protect the safety of our families, our communities, and our nations.

We Sign Our Walls

McAfee employees sign their names on pledge walls at campuses around the world.
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Through and including , (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer’s obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

We are responsible for the information contained in this prospectus and in any free writing prospectus we prepare or authorize. Neither we nor the selling stockholders nor the underwriters have authorized anyone to provide you with different information, and neither we nor the selling stockholders nor the underwriters take responsibility for any other information others may give you. Neither we nor the selling stockholders nor the underwriters are making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than its date.

For investors outside of the United States: neither we nor the selling stockholders nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus or any free writing prospectus we may provide to you in connection with this offering in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about, and observe any restrictions relating to, this offering of the shares of our Class A common stock and the distribution of this prospectus and any such free writing prospectus outside of the United States.
BASIS OF PRESENTATION

Unless the context requires otherwise, references in this prospectus to the “Company,” “we,” “us,” “our,” and “McAfee” (i) for periods through April 3, 2017, refer to the McAfee cybersecurity business, which operated as a part of a business unit of Intel, (ii) for periods from April 4, 2017 to prior to giving effect to the Reorganization Transactions described under “The Reorganization Transactions,” refer to Foundation Technology Worldwide LLC and its subsidiaries, and (iii) after giving effect to the Reorganization Transactions, refer to McAfee Corp. and its consolidated subsidiaries. The financial results of Foundation Technology Worldwide LLC and its subsidiaries will be consolidated in the financial statements of McAfee Corp. following this offering. We have not included the historical financial statements of McAfee Corp. in this prospectus because McAfee Corp. has engaged to date only in activities in contemplation of this offering and has had no operations or assets prior to the completion of the Reorganization Transactions. Following the completion of this offering, McAfee Corp. will be a holding company, and its principal asset will be common units of Foundation Technology Worldwide LLC (“LLC Units”), all of which it will hold directly or indirectly through holding companies. Accordingly, following the completion of this offering, we intend to include the financial statements of McAfee Corp. in our periodic reports and other filings as required by applicable law and the rules and regulations of the Securities and Exchange Commission (the “SEC”). See “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for more information.

This prospectus also includes unaudited consolidated pro forma financial information in order to reflect, on a pro forma basis, the impact of the Reorganization Transactions and as further adjusted for this offering, on the historical financial information of Foundation Technology Worldwide LLC and its subsidiaries. See “Unaudited Pro Forma Consolidated Financial Information.”

As used in this prospectus:

- “2017 Predecessor period” refers to the period of the Predecessor Business from January 1, 2017 through April 3, 2017;
- “2017 Successor period” refers to the period of the Successor Business from April 4, 2017 through December 30, 2017;
- “fiscal 2015” and “fiscal 2016” refer to the fiscal years of the Predecessor Business ended December 26, 2015 and December 31, 2016, respectively;
- “fiscal 2018” refers to the fiscal year of Foundation Technology Worldwide LLC and its subsidiaries ended December 29, 2018;
- “fiscal 2019” refers to our fiscal year ended December 28, 2019;
- “fiscal 2020” refers to our fiscal year ending December 26, 2020;
- “Intel” refers to Intel Corporation;
- “Predecessor Business” refers to the McAfee cybersecurity business, as operated as a part of a business unit of Intel, through April 3, 2017;
- “Reorganization Transactions” refers to the reorganization transactions that are described under “The Reorganization Transactions;”
- “Sponsor Acquisition” refers to: (i) the conversion of McAfee, Inc., which was then a part of a business unit of Intel, into a limited liability company, McAfee, LLC, (ii) the contribution of McAfee, LLC to Foundation Technology Worldwide LLC, a wholly-owned subsidiary of Intel, (iii) the transfer beginning on April 3, 2017, by Intel and its subsidiaries of assets and liabilities of the Predecessor Business not already held through Foundation Technology Worldwide LLC to Foundation Technology Worldwide LLC, and (iv) the acquisition immediately thereafter on April 3, 2017, by our Sponsors and certain co-investors of a majority stake in Foundation Technology Worldwide LLC, following which our Sponsors and certain of their co-investors owned 51.0% of the common equity interests in
Foundation Technology Worldwide LLC, with Intel and certain of its affiliates retaining the remaining 49.0% of the common equity interests;

- “Sponsors” refers to investment funds affiliated with or advised by TPG Global, LLC (“TPG”) and Thoma Bravo, L.P. (“Thoma Bravo”), respectively; and
- “Successor Business” refers to Foundation Technology Worldwide LLC on and after April 4, 2017.
PROSPECTUS SUMMARY

This summary highlights information contained in other parts of this prospectus. Because it is only a summary, it does not contain all of the information that you should consider before investing in shares of our Class A common stock, and it is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere in this prospectus. You should read the entire prospectus carefully, especially “Risk Factors,” “Cautionary Note Regarding Forward-Looking Statements,” and our financial statements and the related notes, before deciding to purchase shares of our Class A common stock.

OUR PLEDGE

We dedicate ourselves to keeping the world safe from cyberthreats. Threats that are no longer limited to the confines of our computers but are prevalent in every aspect of our connected world. We will not rest in our quest to protect the safety of our families, our communities, and our nations.

— On the walls of McAfee campuses worldwide and signed by employees

OVERVIEW

McAfee has been a pioneer and leader in protecting consumers, enterprises, and governments from cyberattacks for more than 30 years with integrated security, privacy, and trust solutions. We built our platform through a deep, rich history of innovation and have established a leading global brand. Whether we are securing the digital experience of a consumer who is increasingly living life online, or defending many of the world’s largest enterprises and governments from sophisticated attacks and nation-state threats, McAfee is singularly committed to one mission: to protect all things that matter through leading-edge cybersecurity.

We live in a digital world. Consumers are increasingly moving their daily lives online, interacting through multiple devices, networks and platforms, and leveraging technology in nearly every aspect of their lives. This shift is most noticeable in the way individuals are working, socializing, consuming, and transacting, leading to a proliferation of digital touchpoints and applications. Remote work and increasing work from home arrangements are driving a pronounced convergence of work and personal life. While people expect effective and frictionless security at work and in their personal lives, this lifestyle shift has been accompanied by a more challenging threat landscape and an increase in points of vulnerability, risking individuals’ privacy, identity, data and other vital resources. Similarly, enterprises embracing employee mobility, work from home strategies, bring your own device, and greater cloud adoption are facing a broader attack surface and dissolving network perimeter. These drivers have amplified the number of workloads across endpoints, making it challenging for enterprises to monitor and protect all of their workloads and applications. This challenge, coupled with an increase in cyberthreats, has heightened the importance of the consumer in making security decisions for their converged digital lives.

We have a differentiated ability to secure the digital experience against cyberthreats by using threat intelligence capabilities that we have developed through the scale and diversity of our sensor network. We define our sensor network as the aggregate of our presence in all of our customers’ endpoints, networks, gateways, and clouds that generate massive amounts of data that we translate into actionable, real-time insights. The McAfee platform is continuously enriched by artificial intelligence, machine learning and the telemetry gathered from over one billion sensors across our consumer, enterprise, and government customer base. Our vast and dynamic data set and advanced analytics capabilities enable us to provide defense for advanced zero-day threats by training machine learning models on the 62.7 billion threat queries we receive each day. McAfee simplifies the
complexity of threat detection and response by correlating events, detecting new threats, reducing false positives, automating and prioritizing incident response, and creating workflows that guide analysts through remediation. Protecting our customers has been the foundation of our success, enabling us to maintain an industry-leading reputation among our customers and partners.

Consumers, enterprises and governments have turned to McAfee as a leading brand in cybersecurity for over 30 years. Our Personal Protection Service provides holistic digital protection for an individual or family at home, on the go, and on the web. Our platform includes device security, privacy and safe Wi-Fi, online protection, and identity protection, creating a seamless and integrated digital moat. With a single interface, simple set up and ease of use, consumers obtain immediate time-to-value whether on a computer, smartphone or tablet, and across multiple operating systems. For enterprises and governments, we offer a comprehensive cybersecurity solution that protects our customers against adversarial threats across cloud, on-premise, hybrid environments and endpoint devices. Our cloud-native MVISION platform offers true device-to-cloud protection with threat detection and data protection for devices, secure access service edge (“SASE”) solutions for the multi-cloud, centralized policy orchestration, automated threat response, and threat insights generated by our predictive analytics engine.

Our consumer focused products protected over 600 million devices as of June 27, 2020. Our consumer go-to-market strategy consists of a digitally-led omnichannel approach to reach the consumer at crucial moments in their purchase lifecycle via several direct and indirect channels. We have longstanding exclusive partnerships with many of the leading PC original equipment manufacturers (“OEMs”) and continue to expand our presence with mobile service providers and internet service providers (“ISPs”) as the demand for mobile security protection increases. Through many of these relationships, our consumer security software is pre-installed on devices on a trial basis until conversion to a paid subscription, through a thoughtfully tailored conversion process that fits the customer journey. Our consumer go-to-market channel also consists of partners including some of the largest electronics retailers and ISPs globally. Our enterprise business protects many of the largest enterprises and governments around the world, including 86%, 78%, and 61% of Fortune 100, Fortune 500, and Global 2000 firms, respectively, as of June 27, 2020. Some of our largest customers are government entities who represent over 25% of our 250 largest Enterprise customers and 45% of our top 250 Enterprise customer annualized contract value, with an average tenure of nearly 20 years. We primarily engage our enterprise and government customers with our direct sales force, while mid-market customers generally conduct their business through our channel partners. We operate a global business, with 46.6% of our fiscal 2019 net revenue earned outside of the United States.

In 2011, McAfee was acquired by Intel and operated as a part of a business unit of Intel. Since then, McAfee has grown from $1.9 billion in net revenue in 2011 to $2.6 billion in 2019. Recognizing the growth drivers that would power a surge in our business, in 2017, our Sponsors acquired a controlling interest in McAfee, accelerating our transformational journey to optimize and reinforce our cybersecurity platform. Over the last several years, we have invested in new routes to market and partnerships for the consumer business, and rationalized our enterprise portfolio by divesting our network firewall, email, and vulnerability management businesses to reorient our focus and resources to products that align with our device-to-cloud strategy. We launched MVISION, the cloud-native family of our platform that offers threat defense, management, automation, and orchestration across devices, networks, clouds (IaaS, PaaS, and SaaS), and on-premises environments. We have also made multiple operational changes designed to increase efficiency in our product delivery and go-to-market strategies. These efforts included the transformation of our performance marketing through a digital first approach focused on new customer acquisition, and overall customer retention, through our PC led product experience and consumer application development programs. Our investments in our platform and strategy have reinforced our market leadership, and we intend to continue innovating to protect our customers.
Our financial performance has been characterized by the following:

- Net revenue was $2,635 million in fiscal 2019 and $1,401 million in the 26 weeks ended June 27, 2020
- Net loss was $236 million in fiscal 2019 and net income was $31 million in the 26 weeks ended June 27, 2020
- Net loss margin was 9.0% in fiscal 2019 and net income margin was 2.2% in the 26 weeks ended June 27, 2020
- Adjusted EBITDA was $799 million in fiscal 2019 and $507 million in the 26 weeks ended June 27, 2020
- Adjusted EBITDA margin was 30.3% in fiscal 2019 and 36.2% in the 26 weeks ended June 27, 2020

See “Selected Consolidated and Combined Financial and Other Data—Non-GAAP Financial Measures” for a description of adjusted EBITDA, and free cash flow, and a reconciliation of these measures to the nearest financial measure calculated in accordance with generally accepted accounting principles (“GAAP”).

INDUSTRY BACKGROUND

The Internet has led to a hyper connected world and driven profound changes in both personal and business settings. As the Internet continues to evolve, introduce new technologies and reshape our lives, consumers, enterprises, and governments continue to react to multiple important trends.

**Online adoption use is global and continues to grow.** Globally, people are coming online faster than ever before. According to IDC, there were over 4 billion Internet users in 2020. Additionally, the number of mobile-only Internet users is expected to grow at an approximate 8% compound annual growth rate (“CAGR”) from 2020 to 2024. According to Frost & Sullivan, there were over 6 billion Internet-connected devices worldwide in 2020. This significant growth in the mobile install base is driving the ubiquity of the Internet and online browsing.

**The global consumer is completing more of their everyday routine online, expanding their digital footprint.** Consumers are more comfortable engaging in critical transactions on mobile devices and their PCs. At the same time, they are rapidly expanding their social interactions and media consumption online, and shifting data storage to cloud-based solutions to store personal photos and large amounts of data that is accessible across any endpoint device. While unlocking consumers’ digital lives allows for convenience, using a greater number of digital platforms increases the surface area that cybercriminals can use to access personal data.

**Increased attack surface results in high risk of being hacked and critical data used for profit.** Cyberattacks have evolved from rudimentary malware into highly sophisticated, organized and large-scale attacks targeting consumers, governments, and a broad range of industries. According to RiskBased Security, during 2019, over 7,000 data breaches were reported, resulting in over 15 billion records being exposed. We have seen the number of threats from external actors targeting cloud services increase approximately 630% from January 2020 to April 2020. Enterprises have to protect themselves from increasing ransomware attacks which has generated billions of dollars in payments to cybercriminals and inflicted significant damage and expenses for consumers, businesses and governments.

**Workplace digital transformation is driving the increased use of cloud-based applications and personal devices, which is straining traditional enterprise defenses.** The development of cloud-based SaaS applications and bring-your-own-device adoption has enabled the enterprise employee to bring their professional lives online.
and into the home. The rapid adoption of cloud applications has increased organizations’ attack surface by moving both threats and sensitive data away from the traditional network perimeter, reducing the effectiveness of many existing security products. Cyberattacks have also fundamentally shifted from not just targeting enterprise infrastructure but also targeting people.

- **Complexity of the IT environment and dissolution of the enterprise perimeter.** According to IDC, spending on cloud IT infrastructure including cloud software is expected to reach almost $272 billion in 2020, approximately a 16% increase year over year, and expected to grow at a CAGR of 19% from 2020 to 2024.

- **Loss of visibility and control.** As devices proliferate and perimeters dissolve, organizations are losing visibility and control of data in their environment. As enterprise environments comprise a mix of clouds, networks, and devices, managing data security policies across this heterogeneous, multi-cloud footprint to avoid breaches and demonstrate regulatory compliance is paramount.

- **Mobility of the workforce.** IDC estimates the mobile worker population in the United States will exceed 93 million by 2024, representing 60% of the total U.S. workforce. As mobile adoption increases, the enterprise attack surface expands. We detected over 35 million total mobile malware incidents in Q4 2019.

- **Third party access.** Enterprises rely on third parties to help complete certain functions or processes. Providing enterprise network access and data to third parties further increases the attack surface area. Data breaches can result if third party networks are compromised and bad actors gain access to data that allows them to access another enterprise’s network.

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**Data and IT infrastructure are increasingly interdependent and require comprehensive protection solutions.** Primary adversarial threat vectors may consistently apply to either data or networks. Cybersecurity victims may find their data or networks held for ransom (ransomware), denied, exploited, or lost. As adversarial tactics and techniques converge to compromise data or networks, defensive technologies must also holistically apply to data protection and threat defense.

- **Data protection.** Data is one of the most important corporate assets, making it a top target for cyber criminals. Enterprises need a centralized solution that automatically enforces and updates a consistent policy to protect data everywhere it lives, including the cloud, corporate endpoints, networks, and unmanaged devices.

- **Threat defense.** The volume and sophistication of cyberattacks continues to increase at a rapid pace. Enterprises need consistent threat defense across endpoint, network, web, and cloud domains to defend against cyberattacks as a vulnerability anywhere has the potential to compromise the entire system.

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**There is a need for integrated device-to-cloud cybersecurity solutions that secure consumers, enterprises and governments in a connected world by offering the following:**

- **Comprehensive and convenient security solutions to protect consumers across their digital footprint.** Consumers have an increasingly expanding digital presence in their daily lives as they access different online platforms and apps. These daily online interactions require solutions that provide peace of mind and that are designed to meet consumers’ anti-malware, identity, and privacy protection needs that can be used by hundreds of millions of digital users around the globe.

- **Consumer protection powered by seamless digital experience across device platforms.** Consumers require holistic digital protection for themselves, their families, and their data across devices and platforms whether they are at home, at work, or on the go. This digital protection requires an interface that is simple to set up and use, and provides ongoing protection without hampering device performance and consumer’s digital experience.
Consumer products to address privacy needs. A growing online presence exposes more personal and financial data that is targeted by malicious hackers for profit. According to Identity Theft Resource Center, more than 490 million individuals were affected by data breaches in 2019 with an estimated global cost of cybercrime of $600 billion per year. Users are increasingly mobile, and thus at a higher risk of connecting to unsecured public Wi-Fi connection, requiring virtual private network (“VPN”) solutions to secure personally identifiable information over unsecured networks.

Data protection and threat defense for heterogeneous, multi-cloud IT and hybrid environments. With the growing reliance on cloud, new threat vectors have emerged, requiring enterprises and governments to have both device-to-cloud and on premise solutions that protect data and defend against threats across heterogeneous devices and clouds, rather than relying on traditional corporate network boundaries.

Comprehensive threat intelligence leveraging a unique global sensor network. Consumers, enterprises, and governments require comprehensive threat intelligence that can gather massive amounts of data from multiple domains and devices and translate that data into actionable, real-time insights to protect against the evolving tactics and techniques of cybercriminals. It is challenging for cybersecurity vendors to accomplish this without a systems approach that integrates real-time data collection, machine learning model training and feedback across billions of sensors deployed with consumer, enterprise, and government customers and across multiple defense domains (endpoint, network, gateway, and cloud).

KEY BENEFITS OF OUR SOLUTIONS

We protect consumers, enterprises, and governments with our differentiated ability to detect, analyze, and manage responses to adversarial threats. Our customers trust us to protect and defend their families, data, network and online experience whether it is on a device or in the cloud, at home or on the go.

Our products are multi-faceted privacy protection solutions that provide consumers security in their everyday lives. Our Personal Protection Service is designed to provide a comprehensive suite of features that protect consumers and their families across their digital lives. Our products provide cross-device identity protection, online privacy, and Internet and device security against the latest virus, malware, spyware and ransomware attacks that are pervasive across all digital devices.

Our solutions provide a seamless and user friendly experience. With a single McAfee Total Protection subscription, our customers can protect multiple devices without impeding the consumer experience via cloud-based online and offline protection across devices to enjoy security at home and on the go. McAfee Total Protection comes with performance-enhancing features that allow for more productivity and entertainment by automatically assigning more dedicated processor power to the apps you are actively using. Our security, privacy and trust solutions provide a seamless and convenient experience, and an integrated digital moat. We are one of the few scaled cybersecurity companies with integrated data protection and threat defense capabilities built into technologies and solutions that span the digital ecosystem.

Our solutions with comprehensive features provide consumers peace of mind that their online experience is protected. Our Personal Protection Service is a holistic digital protection of consumers and their families wherever they are, whatever they do and on any device they own. Personal Protection Service encompasses data and device security and identity protection through our suite of products while delivering an experience that is equally easy to use whether on a computer, a mobile smartphone or a tablet and across multiple operating system platforms.

Our solutions provide integrated threat defense and data protection, from device to cloud. Our unified cloud and endpoint security solutions provide comprehensive threat detection and data
protection from device to cloud with unified policy control and centralized management and incident reporting. We provide customers the ability to easily extend on-premise data policies to multi-cloud environments to secure data wherever it travels or resides and prevent the risk of data loss. Our MVISION Cloud is designed to secure employees working on enterprise cloud services such as Office 365, Salesforce, Box, and Slack.

- **Our solutions are supported by our global threat intelligence network, which is bolstered by artificial intelligence, machine learning, and deep learning to increase efficacy and efficiency.** Our portfolio leverages over one billion telemetry sensors across multiple domains (device, network, gateway, and cloud) that feed our threat intelligence and insights engines. As of August 2020, our global threat intelligence engine responds to 62.7 billion threat queries and identifies 12.4 million unique threats on an average day. By leveraging artificial intelligence, machine learning, and deep learning, we use complex threat detection and response algorithms that collect data from our vast customer base to correlate events, detect new threats, reduce false positives, and guide analysts through remediation.

### MARKET OPPORTUNITY

We estimate that our addressable market comprised of consumer and enterprise security is $30.4 billion in 2020, and is projected to grow at a four-year CAGR of 7.9% and reach $41.2 billion in 2024. According to Frost & Sullivan, the global consumer endpoint security market (comprised of endpoint protection and prevention and consumer privacy and identity protection) addressed by our solutions is expected to reach nearly $13.1 billion in 2020, growing to $18.7 billion in 2024. According to IDC, the addressable enterprise security market addressed by our solutions is expected to reach nearly $17.3 billion in 2020, growing at a CAGR of 6.9% through 2024. The “addressable enterprise security market” represents revenue from five markets (Web Security, SIEM, Network Security, Corporate Endpoint, and Data Loss Protection).

### COMPETITIVE STRENGTHS

Our competitive strengths include:

- **Brand recognition in both Consumer and Enterprise segments.** We have been a trusted provider of cybersecurity products for over 30 years. Built on protecting hundreds of millions of consumers and many of the world’s largest enterprises, our brand recognition drives customer stickiness and bolsters mutually-beneficial long-standing partner relationships.

- **Scale and diversity of threat intelligence network.** The McAfee portfolio is continuously enriched by the intelligence gathered from over one billion sensors across diverse domains and multiple segments (consumers, enterprises, and governments) to inform our machine learning, deep learning, and artificial intelligence capabilities.

- **Experienced management team with deep cybersecurity expertise.** Our world-class management team has extensive cybersecurity expertise and a proven track record of building innovative products and cultivating effective go-to-market strategies at scaled public and private software businesses.

Competitive strengths specific to our Consumer business include:

- **Holistic cybersecurity solutions seamlessly integrated across the consumers’ entire digital ecosystem.** Our holistic personal protection service secures the digital experience and protects privacy of our consumers and their loved ones, across multitude of devices, online, and virtually anywhere. With a single interface, simple set up and ease of use, we provide a seamless and integrated digital moat.
• **Unique footprint across devices.** Our consumer solutions protected over 600 million devices as of June 27, 2020. Our massive security footprint spans traditional devices including PCs, mobile devices including smartphones and tablets, home gateways and smart/Internet of Things (“IoT”) devices. The vast data from these endpoints helps inform our intelligence and insights engine.

• **Differentiated omnichannel go-to-market strategy.** We have longstanding exclusive partnerships with many of the leading PC and mobile OEMs, communications and ISPs, retailers and ecommerce sites, and search providers. The varied routes to market let us reach the consumer at several crucial moments in their subscription lifecycle.

Competitive strengths specific to our Enterprise business include:

• **Comprehensive device-to-cloud platform spanning cloud, on-premise, and hybrid IT environments.** Our endpoint protection platform (“EPP”) and our endpoint detection and response (“EDR”) together protect against advanced threats across heterogeneous device environments. EPP and EDR complements our Unified Cloud Edge (“UCE”) based MVISION Cloud, designed to protect data across a spectrum of cloud and hybrid environments. Along with protection for on-premise deployments, we provide true device-to-cloud cybersecurity.

• **Blue chip enterprise and exclusive government customer base with a long history of partnership.** We defend the largest enterprises as well as governments globally. Our customer base included 86% of the Fortune 100, 78% of the Fortune 500, and over 61% of the Global 2000, as of June 27, 2020. Our largest customers are typically our longest tenured customers and purchase the most number of products from our portfolio to meet their business needs.

## OUR GROWTH STRATEGY

Our strategy is to maintain and extend our technology leadership in cybersecurity solutions for consumers, enterprises, and governments by driving frictionless and secure digital experiences. The following are key elements of our growth strategy:

• **Continue to leverage our strength as a trusted cybersecurity brand to increase sales from new and existing customers.** We have one of the most trusted brands and comprehensive cybersecurity platforms in the market. We will invest in and leverage our brand to tap the significant growth opportunity within our core business, as our portfolio of solutions expands. We will continue to target and educate customers through our various sales & marketing motions.

• **Continue to pursue targeted acquisitions.** We have successfully acquired and integrated businesses, including TunnelBear (a consumer VPN provider) and Skyhigh (a leader in cloud access security broker (“CASB”)). We will continue to pursue targeted acquisitions and believe we are well positioned to successfully execute on our acquisition strategy by leveraging our scale, global reach and routes to market, and data assets.

Key elements specific to our Consumer growth strategy include:

• **Invest in new and existing routes to market for consumer customers.** We will continue to drive sales through our direct-to-customer channels by investing in digital and performance marketing motions. We also intend to strengthen our value proposition to our PC OEMs, and replicate that success with retail and ecommerce partners, communications service providers, and Internet providers. We intend to drive new customer growth by expanding our relationships with communications service providers and ISPs utilizing the cross-platform functionality of our solutions.
• **Enhance and tailor the subscriber conversion and renewal process.** As we expand our routes to market and partnerships, we strive to evolve our conversion and renewal process through approaches such as performance marketing, and educate partners to best support mutually beneficial consumer-centric initiatives.

• **Continue to innovate and enhance our consumer security platform and user experience.** To protect our customer’s digital experience across devices, networks and online interactions we plan to continue to invest in new product and platform innovation to help protect data wherever it resides or travels, and defend against threats across multiple domains.

Key elements specific to our Enterprise strategy include:

• **Invest in new and existing routes to market for enterprise and government customers.** We will continue to invest in our existing direct sales force to strengthen global reach and scale, and build partnerships with public cloud service providers to enable our cloud customers to streamline deployment of MVISION, the cloud-native family of our enterprise platform. Additionally, we will continue to develop a partnership ecosystem comprised of distributors, managed security service providers (“MSSP”), and systems integrators.

• **Focus on winning in endpoint and cloud security to further enhance our device-to-cloud platform.** We are a leader in the emerging cloud security and cloud-native endpoint security markets. Our growing CASB and secure web gateway (“SWG”) cloud security solutions complement our strong EPP and EDR based device protection solutions. We will continue to extend our market leadership as a device-to-cloud security provider and help customers harness the power of our unified security platform.

**SALES AND MARKETING**

*Consumer.* Our consumer go-to-market engine consists of a digitally-led omnichannel approach to reach the consumer at crucial moments in their purchase lifecycle including direct to consumer online sales, acquisition through trial pre-loads on PC OEM devices, and other indirect modes via additional partners such as mobile providers, ISPs, electronics retailers, ecommerce sites, and search providers. Our omnichannel approach and strong partnerships work together to increase our presence at key moments of purchase and security engagement for consumers, allowing us to drive customer engagement and acquisition of new customers.

*Enterprise.* Our enterprise go-to-market strategy leverages direct and indirect routes to market to support customers based on the maturity of our relationship. Our most established accounts are serviced directly by our field sales teams. Emerging accounts and new customers are primarily serviced through a global inside sales engine that work with indirect routes to market. Our enterprise marketing strategy uses a mix of modern digital marketing and traditional marketing approaches. We also use brand awareness campaigns to increase our brand reputation and account-based marketing tactics to support demand generation for high-value customers and prospects.

**RECENT OPERATING RESULTS**

(Preliminary and Unaudited)

Set forth below are preliminary estimates of unaudited selected financial results for the 13-week period ended September 26, 2020 and actual unaudited financial results for the 13-week period ended September 28, 2019. Our unaudited interim consolidated financial statements for the 13-week period ended September 26, 2020
are not yet available. We have provided ranges, rather than specific amounts, for the preliminary estimates of the financial information described below primarily because our financial closing procedures for the 13-week period ended September 26, 2020 are not yet complete. Such preliminary estimated ranges reflect management’s current views and may change as a result of our financial closing procedures, final adjustments, management’s review of results, and other developments that may arise between now and the time the financial results are finalized, and are subject to the finalization of financial and accounting review procedures (which have yet to be performed) and should not be viewed as a substitute for full quarterly financial statements prepared in accordance with GAAP. We caution you that such preliminary estimates are forward looking statements and are not guarantees of future performance or outcomes and that actual results may differ materially from the estimates described below. See “Risk Factors,” “Cautionary Note Regarding Forward-Looking Statements,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for additional information regarding factors that could result in differences between the preliminary estimated ranges of certain of our financial results presented below and the actual financial results and other information we will report for the 39-week period ended September 26, 2020. These estimates are not necessarily indicative of the results to be achieved for the remainder of fiscal 2020 or any future period.

The preliminary estimates for the 13-week period ended September 26, 2020 presented below have been prepared by, and are the responsibility of, management. Neither PricewaterhouseCoopers LLP, our independent registered public accounting firm, nor any other independent registered public accounting firm, has audited, reviewed, compiled, or applied any agreed upon procedures with respect to such preliminary information nor has PricewaterhouseCoopers LLP or any other independent registered public accounting firm audited the financial information for the comparative 13-week period ended September 28, 2019. Accordingly, PricewaterhouseCoopers LLP does not express an opinion or any other form of assurance with respect thereto.

<table>
<thead>
<tr>
<th>(in millions) (unaudited)</th>
<th>13-Week Period Ended</th>
<th>September 28, 2019 (Actual)</th>
<th>September 26, 2020 (Estimated)</th>
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<td>Adjusted EBITDA - Consumer(1)</td>
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<td>Adjusted EBITDA - Enterprise(1)</td>
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(1) See “—Non-GAAP Financial Measures” for more information.

**Total Company**

For the 13-week period ended September 26, 2020, we expect our net revenue to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. The expected [increase/decrease] in our net revenue was primarily driven by . We expect our operating income (loss) to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. We expect our adjusted EBITDA to be between $ and $ compared to
$ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. The expected [increase/decrease] in our operating income (loss) and our adjusted EBITDA was primarily driven by .

**Consumer**

For the 13-week period ended September 26, 2020, we expect our Consumer net revenue to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. The expected [increase/decrease] in our Consumer net revenue was primarily driven by . We expect our Consumer operating income (loss) to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. We expect our Consumer adjusted EBITDA to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. The expected [increase/decrease] in our Consumer operating income (loss) and our Consumer adjusted EBITDA was primarily driven by .

**Enterprise**

For the 13-week period ended September 26, 2020, we expect our Enterprise net revenue to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. The expected [increase/decrease] in our Enterprise net revenue was primarily driven by . We expect our Enterprise operating income (loss) to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. We expect our Enterprise adjusted EBITDA to be between $ and $ compared to $ for the 13-week period ended September 28, 2019, which represents an estimated [increase/decrease] of between % and %. The expected [increase/decrease] in our Enterprise operating income (loss) and our Enterprise adjusted EBITDA was primarily driven by .

**Non-GAAP Financial Measures**

The following table provides reconciliations of our preliminary estimates of adjusted EBITDA, Consumer adjusted EBITDA, and Enterprise adjusted EBITDA to our preliminary estimates of operating income (loss), Consumer operating income (loss), and Enterprise operating income (loss), respectively, for the 13-week period ended September 28, 2020, and reconciliations of actual adjusted EBITDA, Consumer adjusted EBITDA, and Enterprise adjusted EBITDA to actual operating income (loss), Consumer operating income (loss), and Enterprise operating income (loss), respectively, for the 13-week period ended September 28, 2019.

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<th>(in millions) (unaudited)</th>
<th>September 28, 2019 (Actual)</th>
<th>September 26, 2020 (Estimated)</th>
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<td>Operating income (loss)</td>
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<td>Add: Equity-based compensation</td>
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<td>Add: Cash in lieu of equity awards(1)</td>
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<td>Add: Acquisition and integration costs(2)</td>
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<td>Add: Restructuring and transition(3)</td>
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<td>Add: Management fees(4)</td>
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<td>Add: Implementation costs of adopting ASC Topic 606</td>
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<td>Add: Transformation initiatives(5)</td>
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<td>Less: Executive severance(6)</td>
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<td>Operating income (loss)—Consumer</td>
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<td>Add: Amortization</td>
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<td>Add: Amortization</td>
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1. As a result of the Sponsor Acquisition, cash awards were provided to certain employees who held Intel equity awards in lieu of equity in Foundation Technology Worldwide LLC. In addition, as a result of the Skyhigh acquisition, cash awards were provided to certain employees who held Skyhigh equity awards in lieu of equity in Foundation Technology Worldwide LLC and vest over multiple periods based on employee service requirements. As these rollover awards reflect one-time grants to former employees of the Predecessor Business and Skyhigh Networks in connection with these transactions, and the Company does not have a comparable cash-based compensation plan or program in existence, we believe this expense is not reflective of our ongoing results.

2. Represents both direct and incremental costs in connection with business acquisitions, including acquisition consideration structured as cash retention, third party professional fees, and other integration costs.

3. Represents both direct and incremental costs associated with our separation from Intel, including standing up our back office and costs to execute strategic restructuring events, including third-party professional fees and services, transition services provided by Intel, severance, and facility restructuring costs.

4. Represents management fees paid to certain affiliates of our Sponsors and Intel pursuant to the Management Services Agreement. The Management Services Agreement will terminate in connection with this offering and we will be required to pay a one-time fee of $ to such parties.
Represents costs incurred in connection with transformation of the business post-Intel separation. Also includes the cost of workforce restructurings involving both eliminations of positions and relocations to lower cost locations in connection with MAP and other transformational initiatives, strategic initiatives to improve customer retention, activation to pay and cost synergies, inclusive of duplicative run rate costs related to facilities and data center rationalization.

Represents severance to be paid for executive terminations not associated with a strategic restructuring event.

Consumer operating income and Enterprise operating income are the most directly comparable GAAP measures with respect to Consumer adjusted EBITDA and Enterprise adjusted EBITDA. However, we cannot reconcile our estimated range of adjusted EBITDA to net income (loss), the most directly comparable GAAP measure, without unreasonable efforts because of the unpredictable or unknown nature of certain significant items excluded from adjusted EBITDA and the resulting difficulty in quantifying the amounts thereof that are necessary to estimate net income (loss). Specifically, we are unable to estimate our income tax (expense) benefit for the period because we have not completed our evaluation of the impact of various events during the period on income tax (expense) benefit for the period. We expect the variability of these items could have a significant impact on our actual GAAP financial results. See “Selected Consolidated and Combined Financial and Other Data—Non-GAAP Financial Measures” for a description of adjusted EBITDA, how we calculate this measure, and more information on our use and the limitations of adjusted EBITDA as a measure of our financial performance.

SUMMARY RISK FACTORS

An investment in our Class A common stock involves a high degree of risk. Any of the factors set forth under “Risk Factors” may limit our ability to successfully execute our business strategy. You should carefully consider all of the information set forth in this prospectus, and, in particular, you should evaluate the specific factors set forth under “Risk Factors” in deciding whether to invest in our Class A common stock. Among these important risks are the following:

- our ability to predict our results of operations, which may fluctuate significantly;
- the effect of the COVID-19 pandemic on our business;
- changing customer requirements or industry and market developments;
- the high level of competition in our industry;
- our ability to retain customers and to expand sales of our solutions to them;
- our reliance on third-party partners to facilitate the sale of our products and solutions;
- the importance of our relationships with our channel partners;
- the potential need to change pricing models to compete;
- actual or perceived defects, errors, or vulnerabilities in our solutions or an actual or perceived failure to identify, prevent, or block cyberattacks;
- a failure to adapt our product and service offerings to changing customer demands or a lack of customer acceptance of new or enhanced solutions;
- our leverage could adversely affect our ability to raise additional capital to fund our operations;
- our Sponsors’ and Intel’s significant influence over us and our status as a “controlled company” under the rules of the Exchange; and
- the other factors identified under the heading “Risk Factors” beginning on page 29 of this prospectus.
SPONSOR ACQUISITION

Through April 3, 2017, the Predecessor Business was operated as a part of a business unit of Intel. Also prior to April 3, 2017, McAfee, Inc., a Delaware corporation, was then a wholly-owned subsidiary of Intel, was converted into a Delaware limited liability company, McAfee, LLC. Following such conversion, Intel contributed McAfee, LLC to Foundation Technology Worldwide LLC, a wholly-owned subsidiary of Intel. On April 3, 2017, Intel and its subsidiaries transferred assets and liabilities of the Predecessor Business not already held through Foundation Technology Worldwide LLC to Foundation Technology Worldwide LLC. Immediately thereafter on April 3, 2017, our Sponsors and certain of their co-investors acquired a majority stake in Foundation Technology Worldwide LLC, which we refer to, collectively, as the Sponsor Acquisition. Following the Sponsor Acquisition, our Sponsors and certain of their co-investors owned 51.0% of the common equity interests in Foundation Technology Worldwide LLC, with Intel and certain of its affiliates retaining the remaining 49.0% of the common equity interests. We have operated as a standalone company at all times following the Sponsor Acquisition.

SUMMARY OF THE REORGANIZATION TRANSACTIONS AND OUR STRUCTURE

Our business is conducted through Foundation Technology Worldwide LLC and its subsidiaries. Our existing equity owners consist of holders of LLC Units and MIUs of Foundation Technology Worldwide LLC. We refer to the holders of LLC Units following the closing of this offering (other than the Company and our subsidiaries) as “Continuing LLC Owners.” We refer to those of our pre-IPO investors and certain of their affiliates who will receive shares of Class A common stock in connection with the Reorganization Transactions and who will not hold LLC Units as “Continuing Corporate Owners,” and together with the Continuing LLC Owners, as “Continuing Owners.” We refer to the holders of MIUs as well as members of management who elect to exchange their MIUs for Class A common stock as “Management Owners.”

Following the Reorganization Transactions described under the heading “The Reorganization Transactions” elsewhere in this prospectus, our Sponsors and Intel will control approximately 51% of the combined voting power of our outstanding common stock. McAfee Corp. was formed for the purpose of this offering and to date has engaged only in activities in contemplation of this offering.

This offering is being conducted through what is commonly referred to as an “Up-C” structure, which is often used by partnerships and limited liability companies when they decide to undertake an initial public offering. The Up-C structure can allow existing owners of a partnership (or limited liability company that is treated as a partnership for U.S. federal income tax purposes) to continue to realize the tax benefits associated with their ownership of an entity that is treated as a partnership for income tax purposes following an initial public offering, and provides potential tax benefits and associated cash flow to both the issuer corporation and the existing owners of the partnership (or limited liability company that is treated as a partnership for U.S. federal income tax purposes). One of these benefits is that future taxable income of Foundation Technology Worldwide LLC that is allocated to the Continuing LLC Owners will be taxed on a flow-through basis and therefore is not expected to be subject to corporate taxes at the level of Foundation Technology Worldwide LLC or the Company. Additionally, because the Continuing LLC Owners will have certain rights to exchange their LLC Units for cash based upon the market price of our Class A common stock or, at our option, for shares of our Class A common stock, the Up-C structure also provides the Continuing LLC Owners with potential liquidity that holders of interests in non-publicly traded limited liability companies are not typically afforded. See “Description of Capital Stock” and “Risk Factors—Risks Related to Our Organizational Structure.”

In connection with the Reorganization Transactions described under the heading “The Reorganization Transactions” elsewhere in this prospectus, the limited liability company agreement of Foundation Technology
Worldwide LLC will be amended and restated, and McAfee Corp. will become the sole managing member of Foundation Technology Worldwide LLC. McAfee Corp. will issue to the Continuing LLC Owners one share of our Class B common stock for each LLC Unit held by the Continuing LLC Owners. The shares of Class B common stock have no economic rights but entitle the holder to one vote per share on matters presented to stockholders of McAfee Corp. McAfee Corp. will be the sole managing member of Foundation Technology Worldwide LLC, and the other members of Foundation Technology Worldwide LLC will take no part in the management of the Company’s business. Therefore, McAfee Corp. will control all aspects of the business of Foundation Technology Worldwide LLC.

The Continuing LLC Owners will have the right, from time to time and subject to certain restrictions, to exchange one or more of their LLC Units for (1) either (i) cash based upon the market price of the shares of our Class A common stock, or (ii) at our option, shares of our Class A common stock on a one-for-one basis (and we will cancel a corresponding number of shares of Class B common stock by the exchanging member in connection therewith, to the extent the exchanging member has shares of Class B common stock), subject to customary conversion rate adjustments for stock splits, stock dividends, reclassifications, and other similar transactions and (2) payments of additional amounts pursuant to the tax receivable agreement. The holders of MIUs will have the right, from time to time and subject to certain restrictions, to exchange their MIUs for LLC Units, which will then be immediately redeemed for shares of Class A common stock, based on the value of such MIUs relative to their applicable distribution threshold.

Immediately following this offering, after giving effect to the Reorganization Transactions, McAfee Corp. will be a holding company, and its sole material asset held directly or through wholly-owned subsidiaries will be its equity interest in Foundation Technology Worldwide LLC. As the managing member of Foundation Technology Worldwide LLC, McAfee Corp. will operate and control all of the business and affairs of Foundation Technology Worldwide LLC and, through Foundation Technology Worldwide LLC and its subsidiaries, conduct our business. Accordingly, although we will have a minority economic interest in Foundation Technology Worldwide LLC, we will have the sole voting interest in, and control the management of, Foundation Technology Worldwide LLC. As a result, McAfee Corp. will consolidate Foundation Technology Worldwide LLC in its consolidated financial statements and will report a noncontrolling interest related to the LLC Units held by the Continuing LLC Owners in our consolidated financial statements. Following the Reorganization Transactions, McAfee Corp. will own directly or indirectly LLC Units representing % of the economic interest in Foundation Technology Worldwide LLC (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock). The purchasers in this offering (i) will own shares of Class A common stock, representing approximately % of the combined voting power of all of McAfee Corp.’s shares of common stock (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own % of the economic interest in McAfee Corp. (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), and (iii) through McAfee Corp.’s ownership of LLC Units, indirectly will hold (applying the percentages in the preceding clause (ii) to McAfee Corp.’s percentage economic interest in Foundation Technology Worldwide LLC) approximately % of the economic interest in Foundation Technology Worldwide LLC (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
The diagram below depicts our organizational structure immediately following this offering, after giving effect to the Reorganization Transactions, assuming no exercise by the underwriters of their option to purchase additional shares of Class A common stock.

See “The Reorganization Transactions” elsewhere in this prospectus for a description of our structure and the Reorganization Transactions.
**OUR SPONSORS**

**TPG.** TPG is a leading global alternative asset firm founded in 1992 with more than $83 billion of assets under management as of June 30, 2020 and offices in Austin, Beijing, Fort Worth, Hong Kong, Houston, London, Luxembourg, Melbourne, Moscow, Mumbai, New York, San Francisco, Seoul, Singapore, and Washington, DC. TPG’s investment platforms are across a wide range of asset classes, including private equity, growth equity, real estate, and public equity. TPG aims to build dynamic products and options for its investors while also instituting discipline and operational excellence across the investment strategy and performance of its portfolio. TPG has extensive technology expertise with investments that have included Box, C3.ai, Checkmarx, Digital.ai, Domo, Ellucian, Expanse, GuardiCore, IQVIA, Kaseya, LLamasoft, Noodle.ai, Tanium, Transporeon, Wells Sky, Wind River, and Zscaler.

**Thoma Bravo.** Thoma Bravo is a leading private equity firm with a 40+ year history, including more than $50 billion in capital commitments, and a focus on investing in software and technology companies. Thoma Bravo pioneered the buy-and-build investment strategy, and first applied this strategy to the software and technology industries 20+ years ago. Since then, the firm has acquired more than 260 software and technology companies representing over $78 billion of value. Thoma Bravo’s investment philosophy is centered around working collaboratively with existing management teams to help drive operating results and innovation. It executes through a partnership-driven approach supported by a set of management principles, operating metrics, and business processes. Thoma Bravo supports its companies by investing in growth initiatives and strategic acquisitions designed to drive long-term value.

**CORPORATE INFORMATION**

McAfee Corp. was formed in Delaware on July 19, 2019. We have no material assets other than our ownership of the LLC Units and have not engaged in any business activities except in connection with this offering and the Reorganization Transactions described above. Our principal executive offices are located at 6220 America Center Drive, San Jose, California 95002, and our telephone number is (866) 622-3911. Our Internet website is www.mcafee.com. The information on, or that can be accessed through, our website and the other websites that we present in this prospectus is not part of this prospectus, and you should not rely on any such information in making the decision whether to purchase shares of our Class A common stock.

**Channels for Disclosure of Information**

Investors, the media, and others should note that, following the completion of this offering, we intend to announce material information to the public through filings with the SEC, the investor relations page on our website (www.mcafee.com), press releases, public conference calls, and public webcasts.

The information disclosed by the foregoing channels could be deemed to be material information. As such, we encourage investors, the media, and others to follow the channels listed above and to review the information disclosed through such channels.

Any updates to the list of disclosure channels through which we will announce information will be posted on the investor relations page on our website.
## THE OFFERING

<table>
<thead>
<tr>
<th>Description</th>
<th>McAfee Corp.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuer in this offering</td>
<td></td>
</tr>
<tr>
<td>Class A common stock offered by us</td>
<td></td>
</tr>
<tr>
<td>shares (or shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock).</td>
<td></td>
</tr>
<tr>
<td>Class A common stock offered by the selling stockholders . . .</td>
<td></td>
</tr>
<tr>
<td>shares (or shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock).</td>
<td></td>
</tr>
<tr>
<td>Underwriters’ option to purchase additional shares of Class A common stock from us and the selling stockholders</td>
<td></td>
</tr>
<tr>
<td>shares</td>
<td></td>
</tr>
<tr>
<td>Class A common stock to be outstanding after this offering</td>
<td></td>
</tr>
<tr>
<td>shares (or shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock).</td>
<td></td>
</tr>
<tr>
<td>Class B common stock to be outstanding after this offering</td>
<td></td>
</tr>
<tr>
<td>shares (or shares upon the purchase by us directly or indirectly of issued and outstanding LLC Units together with an equal number of shares of Class B common stock from certain Continuing LLC Owners). In connection with this offering, shares of our Class B common stock will be issued in equal proportion to new LLC Units held by the Continuing Owners. Each LLC Unit of Foundation Technology Worldwide LLC will be exchangeable for cash or (at our option) for one share of Class A common stock and we will cancel a share of Class B common stock held by the exchanging member in connection therewith (to the extent the exchanging member has shares of Class B common stock). See “The Reorganization Transactions—The Reorganization Transactions —Exchange Mechanics.”</td>
<td></td>
</tr>
<tr>
<td>Voting power held by holders of Class A common stock after giving effect to this offering by us (and the expected use of proceeds therefrom) and the selling stockholders</td>
<td>%</td>
</tr>
<tr>
<td>Voting power held by holders of Class B common stock after giving effect to this offering by us (and the expected use of proceeds therefrom) and the selling stockholders</td>
<td>%</td>
</tr>
<tr>
<td>Voting rights</td>
<td>Following the Reorganization Transactions, holders of our Class A common stock and Class B common stock will vote together as a single class on all matters presented to stockholders for their vote or approval, except as otherwise required by law or as otherwise provided by our certificate of incorporation. Each share of Class A common stock and Class B common stock will entitle its holder to one vote per share on all such matters. See “Description of Capital Stock.”</td>
</tr>
</tbody>
</table>
### Use of proceeds

We estimate that the net proceeds to us from this offering will be approximately $\_
\_ million, or approximately $\_
\_ million if the underwriters exercise in full their option
to purchase additional shares of Class A common stock, at an assumed initial public
offering price of $\_
\_ per share, the midpoint of the price range set forth on the cover
of this prospectus, after deducting the estimated underwriting discounts and commissions.

We intend to use the net proceeds from the sale by the Company of shares of Class A
common stock in this offering to purchase directly or indirectly (i) newly-issued LLC Units
from Foundation Technology Worldwide LLC and (ii) issued and outstanding LLC
Units and an equal number of shares of Class B common stock from certain Continuing
LLC Owners (or LLC Units and an equal number of shares of Class B common
stock if the underwriters exercise in full their option to purchase additional shares of Class
A common stock) at a purchase price per unit equal to the initial public offering price per
share of Class A common stock, less underwriting discounts and commissions. Foundation
Technology Worldwide LLC will pay the unpaid expenses of this offering, which we
estimate will be $\_
\_ in the aggregate. Foundation Technology Worldwide LLC
will not receive any proceeds that we use to purchase LLC Units and an equal number of shares
of Class B common stock from Continuing LLC Owners, and we will not receive any of
the proceeds from the sale of shares of Class A common stock by the selling stockholders.
We intend to cause Foundation Technology Worldwide LLC to use the remainder of the net
proceeds from the offering as follows:

- approximately $\_
\_ million to repay a portion of our Second Lien Term Loan
  (as defined in “Description of Certain Indebtedness”); and
- the remainder for working capital and other general corporate purposes, including
  the acquisition of, or investment in complementary products, technologies,
  solutions, or businesses, although we have no present commitments or agreements
to enter into any acquisitions or investments.

See “Use of Proceeds.”

### Conflicts of Interest

Affiliates of TPG beneficially own in excess of 10% of our issued and outstanding
common stock. Because TPG Capital BD, LLC, an affiliate of TPG, is an underwriter in
this offering and its affiliates own in excess of 10% of our issued and outstanding common
stock, TPG Capital BD, LLC is deemed to have a “conflict of interest” under Rule 5121
(“Rule 5121”) of the Financial Industry Regulatory Authority, Inc. (“FINRA”).

Accordingly, this offering is being made in compliance with the requirements of Rule
5121. Pursuant to that rule, the appointment of a “qualified independent underwriter” is not
required in connection with this offering as the member primarily
responsible for managing the public offering does not have a conflict of interest, is not an affiliate of any member that has a conflict of interest and meets the requirements of paragraph (f)(12)(E) of Rule 5121. See “Underwriters (Conflicts of Interest).”

Dividend policy

Following completion of this offering, we expect that Foundation Technology Worldwide LLC will initially pay a cash distribution to its members on a quarterly basis at an aggregate annual rate of approximately $\_\text{million}. McAfee Corp. is expected to receive a portion of any such distribution through the LLC Units it holds directly or indirectly through its wholly-owned subsidiaries on the record date for any such distribution declared by Foundation Technology Worldwide LLC, which is expected to equal the number of shares of Class A common stock outstanding on such date. McAfee Corp. expects to use the proceeds it receives from such quarterly distribution to declare a cash dividend on its shares of Class A common stock. The timing, declaration, amount of, and payment of any such dividends will be made at the discretion of McAfee Corp.’s board of directors, subject to applicable laws, and will depend upon many factors, including the amount of the distribution received by McAfee Corp. from Foundation Technology Worldwide LLC, our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions, and other factors that McAfee Corp.’s board of directors may deem relevant. Moreover, if, as expected, McAfee Corp. determines to initially pay a dividend following any quarterly distributions from Foundation Technology Worldwide LLC, there can be no assurance that McAfee Corp. will continue to pay dividends in the same amounts or at all thereafter. See “Dividend Policy.”

Immediately following this offering and after giving effect to the Reorganization Transactions, McAfee Corp. will be a holding company, and its principal asset (directly or through holding companies) will be its equity interest in Foundation Technology Worldwide LLC. If McAfee Corp. decides to pay any other dividend on our Class A common stock in the future, it would likely need to cause Foundation Technology Worldwide LLC to make distributions to McAfee Corp. and its wholly-owned subsidiaries in an amount sufficient to pay such dividend. If Foundation Technology Worldwide LLC makes such distributions to McAfee Corp. and its wholly-owned subsidiaries, the other holders of LLC Units will be entitled to receive pro rata distributions, as well as, in certain cases, the holders of MIUs.

Currently, the provisions of our Senior Secured Credit Facilities place certain limitations on the amount of cash dividends we can pay. See “Description of Certain Indebtedness.”

Exchange rights of holders of LLC Units

In connection with the Reorganization Transactions and this offering, the limited liability company agreement of Foundation Technology Worldwide LLC provides for the exchange of certain of the Class B common stock of McAfee Corp. for LLC Units. See “Exchange Rights of Holders of LLC Units.”
Worldwide LLC will be amended and restated and will provide the ability (subject to certain limitations) to exchange one or more LLC Units for cash or, at our option, together with the corresponding number of shares of Class B common stock, as applicable, for shares of Class A common stock of McAfee Corp. on a one-for-one basis, subject to customary conversion rate adjustments for stock splits, stock dividends and reclassifications. The holders of MIUs will have the right, from time to time and subject to certain restrictions, to exchange their MIUs for LLC Units, which will then be immediately redeemed for shares of Class A common stock, based on the value of such MIUs relative to their applicable distribution threshold. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Amended and Restated Limited Liability Company Agreement of Foundation Technology Worldwide LLC.”

Prior to the completion of this offering, we will enter into a tax receivable agreement with certain of our Continuing Owners that provides for the payment by McAfee Corp. to such pre-IPO owners and certain of their affiliates of % of the benefits, if any, that McAfee Corp. is deemed to realize (calculated using certain assumptions) as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) and tax basis adjustments in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) as a result of sales or exchanges of LLC Units after this offering, (iii) certain tax attributes of the corporations McAfee Corp. acquires in connection with the Reorganization Transactions (including their allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries)), and (iv) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. The increases in existing tax basis and tax basis adjustments generated over time may increase (for tax purposes) depreciation and amortization deductions and, therefore, may reduce the amount of tax that McAfee Corp. would otherwise be required to pay in the future. Actual tax benefits realized by McAfee Corp. may differ from tax benefits calculated under the tax receivable agreement as a result of the use of certain assumptions in the tax receivable agreement, including the use of an assumed weighted-average state and local income tax rate to calculate tax benefits. This payment obligation is an obligation of McAfee Corp. and not of Foundation Technology Worldwide LLC. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Tax Receivable Agreement.”
Upon the completion of this offering, our Sponsors and Intel will control approximately % of the combined voting power of our outstanding common stock. As a result, we will be a “controlled company” under the Exchange corporate governance standards. Under these standards, a company of which more than 50% of the voting power is held by an individual, group, or another company is a “controlled company” and may elect not to comply with certain corporate governance standards.

You should read the “Risk Factors” section of this prospectus for a discussion of factors to consider carefully before deciding to invest in shares of our Class A common stock.

“MCFE”

Unless otherwise indicated, the number of shares of Class A common stock to be outstanding after this offering is based on shares of Class A common stock outstanding immediately following the Reorganization Transactions and excludes the following:

- shares of Class A common stock issuable upon exchange or redemption of LLC Units, together with corresponding shares of Class B common stock;
- shares of Class A common stock that would be outstanding if all MIUs were exchanged for shares of Class A common stock, excluding MIUs with performance-based vesting conditions whose vesting conditions would not be satisfied, assuming the assumed initial public offering price per share (the midpoint of the price range set forth on the cover page of this prospectus) remains the same;
- shares of Class A common stock issuable upon exercise of outstanding awards under our equity incentive plans as of a weighted average exercise price of $ per share of Class A common stock;
- shares of Class A common stock reserved for future issuance under our equity incentive plans as of ; and
- shares of Class A common stock authorized for sale under the Employee Stock Purchase Plan (“ESPP”) as of , which will become effective prior to the completion of this offering.

Unless otherwise indicated, this prospectus reflects and assumes the following:

- the consummation of the Reorganization Transactions;
- the adoption of our amended and restated certificate of incorporation and our amended and restated bylaws to be effective immediately prior to the completion of this offering; and
- no exercise by the underwriters of their option to purchase up to additional shares of our Class A common stock in this offering.
### SUMMARY CONSOLIDATED AND COMBINED FINANCIAL AND OTHER DATA

The following table sets forth the summary consolidated and combined financial and other data of Foundation Technology Worldwide LLC for the periods presented and at the dates indicated below. Following this offering, Foundation Technology Worldwide LLC will be considered our legal predecessor. For accounting purposes, the terms “Predecessor” or “Predecessor Business” and “Successor” or “Successor Business” used below and throughout this prospectus refer to the periods prior and subsequent to the Sponsor Acquisition on April 3, 2017, respectively.

The summary combined statements of operations and cash flows data presented below for the period from January 1, 2017 to April 3, 2017 relate to the Predecessor Business and are derived from audited combined financial statements that are included elsewhere in this prospectus. The summary consolidated statements of operations and cash flows data for the period from April 4, 2017 to December 30, 2017 and fiscal 2018, and fiscal 2019 relate to the Successor Business and are derived from audited consolidated financial statements that are included elsewhere in this prospectus. The summary consolidated statements of operations and cash flows data for the 26-week periods ended June 29, 2019 and June 27, 2020, and the consolidated balance sheet data as of June 27, 2020, relate to the Successor Business and are derived from unaudited condensed consolidated financial statements that are included elsewhere in this prospectus. On April 3, 2017, our Sponsors and certain of their co-investors acquired a majority stake in Foundation Technology Worldwide LLC pursuant to the Sponsor Acquisition. Following the Sponsor Acquisition, our Sponsors and certain of their co-investors owned 51.0% of the common equity interest in Foundation Technology Worldwide LLC, with Intel and certain of its affiliates retaining the remaining 49.0% of the common equity interests.

Subsequent to the Sponsor Acquisition, we undertook various transformation and restructuring activities to improve cost synergies, consumer customer retention and engagement, consumer customer conversion and acquisition strategies, and enterprise go-to-market and support strategies. These activities changed our operations and structure impacting the comparability of our operating results.

We adopted Accounting Standards Codification, or ASC, Topic 606, Revenue from Contracts with Customers, or ASC Topic 606, on December 31, 2017, using the modified retrospective transition method. Under this method, results for reporting periods beginning on December 31, 2017 are presented in accordance with ASC Topic 606, while prior period amounts are not adjusted and continue to be reported in accordance with our historical accounting under ASC Topic 605, Revenue Recognition.

We maintain a 52- or 53-week fiscal year that ends on the last Saturday in December. Period ended April 3, 2017 is a 13-week period starting on January 1, 2017. Period ended December 30, 2017 is a 39-week fiscal period starting on April 4, 2017. Fiscal 2018 is a 52-week year starting on December 31, 2017 and ending on December 29, 2018. Fiscal 2019 is a 52-week year starting on December 30, 2018 and ending on December 28, 2019. 26-week period ended June 29, 2019 is a 26-week period starting on December 30, 2018 and ending on June 29, 2019. 26-week period ended June 27, 2020 is a 26-week period starting on December 29, 2019 and ending on June 27, 2020.

Selected historical consolidated financial data for McAfee Corp. has not been provided, as McAfee Corp. is a newly incorporated entity and has had no business transactions or other activities to date and no assets or liabilities during the periods presented below.

The unaudited condensed consolidated financial statements were prepared on a basis consistent with our audited consolidated financial statements and include all adjustments, consisting of normal and recurring adjustments that we consider necessary for a fair statement of the financial condition and results of operations as of and for such periods. Operating results for the periods presented are not necessarily indicative of the results that may
be expected in future periods, and operating results for the 26-week period ended June 27, 2020 are not necessarily indicative of results for the full year. The following information should be read in conjunction with “The Reorganization Transactions,” “Use of Proceeds,” “Capitalization,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Unaudited Pro Forma Consolidated Financial Information” and our audited consolidated financial statements and the related notes included elsewhere in this prospectus.
## Results of Operations Data

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
<th>Successor 26-Week Period Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net revenue</strong></td>
<td>$506</td>
<td>$1,490</td>
<td>$2,409</td>
<td>$2,637</td>
<td>$1,291</td>
</tr>
<tr>
<td><strong>Cost of sales</strong></td>
<td>$113</td>
<td>$542</td>
<td>$640</td>
<td>$843</td>
<td>$429</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>$423</td>
<td>$948</td>
<td>$1,509</td>
<td>$1,792</td>
<td>$862</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$212</td>
<td>$584</td>
<td>$815</td>
<td>$770</td>
<td>$383</td>
</tr>
<tr>
<td>Research and development</td>
<td>$127</td>
<td>$323</td>
<td>$406</td>
<td>$380</td>
<td>$193</td>
</tr>
<tr>
<td>General and administrative</td>
<td>$51</td>
<td>$157</td>
<td>$253</td>
<td>$272</td>
<td>$123</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>$40</td>
<td>$167</td>
<td>$232</td>
<td>$222</td>
<td>$113</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>$66</td>
<td>$135</td>
<td>$1,742</td>
<td>$1,666</td>
<td>$827</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>$496</td>
<td>$1,354</td>
<td>$1,742</td>
<td>$1,666</td>
<td>$827</td>
</tr>
<tr>
<td><strong>Operating income (loss)</strong></td>
<td>$(73)</td>
<td>$(406)</td>
<td>$(173)</td>
<td>$(126)</td>
<td>$(35)</td>
</tr>
<tr>
<td><strong>Interest expense and other, net</strong></td>
<td>$(1)</td>
<td>$(159)</td>
<td>$(307)</td>
<td>$(295)</td>
<td>$(143)</td>
</tr>
<tr>
<td><strong>Foreign exchange gain (loss), net</strong></td>
<td>$3</td>
<td>$(9)</td>
<td>$30</td>
<td>$20</td>
<td>$(1)</td>
</tr>
<tr>
<td><strong>Income (loss) before income taxes</strong></td>
<td>$(71)</td>
<td>$(574)</td>
<td>$(450)</td>
<td>$(149)</td>
<td>$(107)</td>
</tr>
<tr>
<td><strong>Provision for income tax expense</strong></td>
<td>$8</td>
<td>$(607)</td>
<td>$(512)</td>
<td>$(236)</td>
<td>$(146)</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>$(79)</td>
<td>$(607)</td>
<td>$(512)</td>
<td>$(236)</td>
<td>$(146)</td>
</tr>
<tr>
<td><strong>Net income (loss) per unit, basic</strong></td>
<td>$6.58</td>
<td>$(5.48)</td>
<td>$(2.51)</td>
<td>$(1.55)</td>
<td>$(0.33)</td>
</tr>
<tr>
<td><strong>Net income (loss) per unit, diluted</strong></td>
<td>$6.58</td>
<td>$(5.48)</td>
<td>$(2.51)</td>
<td>$(1.55)</td>
<td>$(0.32)</td>
</tr>
<tr>
<td><strong>Weighted-average units outstanding, basic</strong></td>
<td>$92.3</td>
<td>$93.4</td>
<td>$94.1</td>
<td>$94.0</td>
<td>$94.5</td>
</tr>
<tr>
<td><strong>Weighted-average units outstanding, diluted</strong></td>
<td>$92.3</td>
<td>$93.4</td>
<td>$94.1</td>
<td>$94.0</td>
<td>$94.5</td>
</tr>
<tr>
<td><strong>Pro forma net income (loss) per share data:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Pro forma net income (loss) per share, basic</strong></td>
<td>$(2)</td>
<td>$(5.48)</td>
<td>$(2.51)</td>
<td>$(1.55)</td>
<td>$(0.33)</td>
</tr>
<tr>
<td><strong>Pro forma net income (loss) per share, diluted</strong></td>
<td>$(2)</td>
<td>$(5.48)</td>
<td>$(2.51)</td>
<td>$(1.55)</td>
<td>$(0.32)</td>
</tr>
<tr>
<td><strong>Pro forma weighted-average shares of Class A common stock outstanding, basic</strong></td>
<td>$92.3</td>
<td>$93.4</td>
<td>$94.1</td>
<td>$94.0</td>
<td>$94.5</td>
</tr>
<tr>
<td><strong>Pro forma weighted-average shares of Class A common stock outstanding, diluted</strong></td>
<td>$92.3</td>
<td>$93.4</td>
<td>$94.1</td>
<td>$94.0</td>
<td>$94.5</td>
</tr>
</tbody>
</table>

## Statements of Cash Flows Data

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
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<th>Successor 26-Week Period Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating activities</strong></td>
<td>$65</td>
<td>$316</td>
<td>$319</td>
<td>$496</td>
<td>$96</td>
</tr>
<tr>
<td><strong>Inventing activities</strong></td>
<td>$(10)</td>
<td>$(577)</td>
<td>$(63)</td>
<td>$(24)</td>
<td>$(33)</td>
</tr>
<tr>
<td><strong>Financing activities</strong></td>
<td>$23</td>
<td>$87</td>
<td>$(734)</td>
<td>$(467)</td>
<td>$(162)</td>
</tr>
</tbody>
</table>

(1) Includes equity-based compensation expense as follows:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
<th>Successor 26-Week Period Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sales and marketing</strong></td>
<td>$9</td>
<td>$3</td>
<td>$6</td>
<td>$5</td>
<td>$2</td>
</tr>
<tr>
<td><strong>Research and development</strong></td>
<td>$8</td>
<td>$2</td>
<td>$13</td>
<td>$12</td>
<td>$6</td>
</tr>
<tr>
<td><strong>General and administrative</strong></td>
<td>$3</td>
<td>$3</td>
<td>$8</td>
<td>$7</td>
<td>$3</td>
</tr>
<tr>
<td><strong>Total equity-based compensation expense</strong></td>
<td>$23</td>
<td>$8</td>
<td>$28</td>
<td>$25</td>
<td>$12</td>
</tr>
</tbody>
</table>

(2) The calculation of unaudited basic and diluted pro forma net income (loss) per share reflects certain pro forma adjustments in accordance with Article 11 of Regulation S-X. See “Unaudited Pro Forma Consolidated Financial Information.”
Consolidated Balance Sheet Data

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$257</td>
</tr>
<tr>
<td>Working capital(2)</td>
<td>(1,279)</td>
</tr>
<tr>
<td>Total assets</td>
<td>5,548</td>
</tr>
<tr>
<td>Current and long-term deferred revenue</td>
<td>2,265</td>
</tr>
<tr>
<td>Current and long-term debt, net of borrowing costs</td>
<td>4,703</td>
</tr>
<tr>
<td>Redeemable units</td>
<td>17</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(1,354)</td>
</tr>
<tr>
<td>Total deficit</td>
<td>(2,282)</td>
</tr>
</tbody>
</table>

(1) Pro forma reflects the (i) effect of the Reorganization Transactions, (ii) issuance of shares of Class A common stock by us in this offering and the receipt of approximately $ million in net proceeds from the sale of such shares, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus after deducting underwriting discounts and commissions and estimated offering expenses, and (iii) application of the estimated proceeds of the offering. See “Use of Proceeds.”

(2) Working capital is comprised of current assets less current liabilities.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share of Class A common stock, the midpoint of the price range set forth on the cover of this prospectus would increase (decrease) the net proceeds to us from this offering by $ million, assuming the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated expenses payable by us. An increase or decrease of 1,000,000 shares from the expected number of shares of Class A common stock to be sold by us in this offering would cause the net proceeds received by us to increase or decrease, respectively, by approximately $ million, assuming the assumed initial public offering price per share (the midpoint of the price range set forth on the cover page of this prospectus) remains the same. Any increase or decrease in proceeds due to a change in the initial public offering price or number of shares issued would increase or decrease, respectively, the amount of net proceeds contributed to Foundation Technology Worldwide LLC to be used by it for working capital and general corporate purposes.

Non-GAAP Financial Measures

We believe that in addition to our results determined in accordance with GAAP, billings, adjusted operating income, adjusted operating income margin, adjusted EBITDA, adjusted EBITDA margin, adjusted net income, adjusted net income margin, and free cash flow are useful in evaluating our business, results of operations and financial condition. We believe that this non-GAAP financial information may be helpful to investors because it provides consistency and comparability with past financial performance and facilitates period to period comparisons of operations, as these eliminate the effects of certain variables from period to period for reasons that we do not believe reflect our underlying business performance. However, non-GAAP financial information is presented for supplemental informational purposes only and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. Our presentation of these measures should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation. Other companies in our industry may calculate these measures differently, which may limit their usefulness as a comparative measure.
See “Selected Consolidated and Combined Financial and Other Data—Non-GAAP Financial Measures” for explanations of how we calculate these measures and for reconciliation to the most directly comparable financial measure stated in accordance with GAAP.

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period from</td>
<td>Period from</td>
<td>Fiscal</td>
<td>26-Week</td>
</tr>
<tr>
<td></td>
<td>January 1</td>
<td>April 4 to</td>
<td>Year Ended</td>
<td>Period</td>
</tr>
<tr>
<td></td>
<td>to April 3,</td>
<td>December 30,</td>
<td>Ended</td>
<td>Ended</td>
</tr>
<tr>
<td></td>
<td>2017</td>
<td>2017</td>
<td>2018</td>
<td>2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>December 28,</td>
<td>June 25,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2019</td>
<td>2019</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>June 27,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>(in millions, except percentages)</td>
<td>$ 586</td>
<td>$ 1,490</td>
<td>$ 2409</td>
<td>$ 2,635</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$ 1,992</td>
<td>$ 2,717</td>
<td>$ 2,820</td>
<td>$ 1,303</td>
</tr>
<tr>
<td>Billings</td>
<td></td>
<td></td>
<td></td>
<td>$ 1,374</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(73)</td>
<td>(406)</td>
<td>(173)</td>
<td>126</td>
</tr>
<tr>
<td>Operating income (loss) margin</td>
<td>(12.5)%</td>
<td>(27.2)%</td>
<td>(7.2)%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (79)</td>
<td>$ (607)</td>
<td>$ (512)</td>
<td>$ (236)</td>
</tr>
<tr>
<td>Net income (loss) margin</td>
<td>(13.5)%</td>
<td>(40.7)%</td>
<td>(21.3)%</td>
<td>(9.0)%</td>
</tr>
<tr>
<td>Adjusted operating income</td>
<td>$ 58</td>
<td>$ 123</td>
<td>$ 480</td>
<td>$ 733</td>
</tr>
<tr>
<td>Adjusted operating income margin</td>
<td>9.9%</td>
<td>8.3%</td>
<td>19.9%</td>
<td>27.8%</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ 76</td>
<td>$ 170</td>
<td>$ 540</td>
<td>$ 799</td>
</tr>
<tr>
<td>Adjusted EBITDA margin</td>
<td>13.0%</td>
<td>11.4%</td>
<td>22.4%</td>
<td>30.3%</td>
</tr>
<tr>
<td>Adjusted net income (loss)</td>
<td>$ 49</td>
<td>$ (105)</td>
<td>$ 143</td>
<td>$ 396</td>
</tr>
<tr>
<td>Adjusted net income (loss) margin</td>
<td>8.4%</td>
<td>(7.0)%</td>
<td>5.9%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>$ (65)</td>
<td>$ 316</td>
<td>$ 319</td>
<td>$ 496</td>
</tr>
<tr>
<td>Net cash provided by (used in) investing activities</td>
<td>(10)</td>
<td>(39)</td>
<td>(677)</td>
<td>(63)</td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>(23)</td>
<td>87</td>
<td>459</td>
<td>(734)</td>
</tr>
<tr>
<td>Free cash flow</td>
<td>(94)</td>
<td>277</td>
<td>257</td>
<td>435</td>
</tr>
</tbody>
</table>

**Billings**

We define billings as net revenue recognized in accordance with GAAP plus the change in deferred revenue from the beginning to the end of the period, excluding the impact of deferred revenue assumed through acquisitions during the period. We view billings as a key metric, as it includes changes in our deferred revenue during the period, which is an important indicator of future trends and is a significant percentage of future revenue.

**Adjusted Operating Income, Adjusted Operating Income Margin, Adjusted EBITDA, and Adjusted EBITDA Margin**

We regularly monitor adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin to assess our operating performance. We define adjusted operating income for the total Company as net income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense, interest expense and other, net, provision for income tax expense, foreign exchange (gain) loss, net, and other costs that we do not believe are reflective of our ongoing operations. We define adjusted operating income for our Consumer and Enterprise segments as segment operating income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense and other costs attributable to the segment that we do not believe are reflective of the segment’s ongoing operations. We present this reconciliation of adjusted operating income (loss) to operating income for Consumer and Enterprise segments because operating income (loss) is the primary measure of profitability used to assess segment performance, and is therefore the most directly comparable GAAP financial measure for our operating segments.
Adjusted operating income margin is calculated as adjusted operating income divided by net revenue. We define adjusted EBITDA as adjusted operating income, excluding the impact of depreciation expense and other non-operating costs. Adjusted EBITDA margin is calculated as adjusted EBITDA divided by net revenue. We believe presenting adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin provides management and investors consistency and comparability with our past financial performance and facilitates period to period comparisons of operations, as it eliminates the effects of certain variations unrelated to our overall performance. Adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin have limitations as analytical tools, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted operating income and adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;
- adjusted operating income and adjusted EBITDA do not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our debt;
- adjusted operating income and adjusted EBITDA do not reflect income tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted operating income and adjusted EBITDA differently, which reduce their usefulness as comparative measures.

Because of these limitations, you should consider adjusted operating income and adjusted EBITDA alongside other financial performance measures, including operating income (loss), net income (loss) and our other GAAP results. In evaluating adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation of adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin. Adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin are not presentations made in accordance with GAAP and the use of these terms vary from other companies in our industry.

**Adjusted Net Income and Adjusted Net Income Margin**

We regularly monitor adjusted net income, and adjusted net income margin to assess our operating performance. We define adjusted net income as net income (loss), excluding the impact of amortization of intangible assets, amortization of debt issuance costs, equity-based compensation expense, other costs, and certain non-recurring tax benefits and expenses that we do not believe to be reflective of our ongoing operations and the tax impact of these adjustments. Adjusted net income margin is calculated as adjusted net income divided by net revenue. Adjusted net income and adjusted net income margin have limitations as analytical tools, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although amortization is non-cash charge, the assets being amortized may have to be replaced in the future, and adjusted net income does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
adjusted net income does not reflect changes in, or cash requirements for, our working capital needs;

other companies, including companies in our industry, may calculate adjusted net income differently, which reduce its usefulness as comparative measures.

Because of these limitations, you should consider adjusted net income alongside other financial performance measures, including operating income (loss), net income (loss) and our other GAAP results. In evaluating adjusted net income and adjusted net income margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of adjusted net income and adjusted net income margin should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation of adjusted net income and adjusted net income margin. Adjusted net income and adjusted net income margin are not presentations made in accordance with GAAP and the use of these terms vary from other companies in our industry.

Free Cash Flow

We define free cash flow as net cash provided by operating activities less capital expenditures. We consider free cash flow to be a liquidity measure that provides useful information to management and investors about the amount of cash generated by the business that can be used for strategic opportunities, including investing in our business, making strategic acquisitions, and strengthening the balance sheet.

Our Operating Segments

We manage our business in two operating segments, Consumer and Enterprise. A significant portion of our operating segments’ operating expenses are allocated from shared resources based on the estimated utilization of services provided to or benefits received by the operating segments. See Note 6 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus.

The table below summarizes our results of operations by segment for fiscal 2018 compared to fiscal 2019 and the 26-week periods ended June 29, 2019 and June 27, 2020. We believe adjusted EBITDA is useful in evaluating our business, but should not be considered in isolation or as a substitute for GAAP. See “Selected Consolidated and Combined Financial and Other Data—Non-GAAP Financial Measures” for explanations of how we calculate these measures and for reconciliation to the most directly comparable financial measure stated in accordance with GAAP.

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year Ended</th>
<th>26-Week Period Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
</tr>
<tr>
<td>Net revenue - Consumer</td>
<td>$1,161</td>
<td>$1,303</td>
</tr>
<tr>
<td>Net revenue - Enterprise</td>
<td>1,248</td>
<td>1,332</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$2,409</td>
<td>$2,635</td>
</tr>
<tr>
<td>Consumer operating income - Consumer</td>
<td>$107</td>
<td>$277</td>
</tr>
<tr>
<td>Consumer operating income (loss) - Enterprise</td>
<td>(280)</td>
<td>(151)</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>$(173)</td>
<td>$126</td>
</tr>
<tr>
<td>Adjusted EBITDA - Consumer</td>
<td>$431</td>
<td>$580</td>
</tr>
<tr>
<td>Adjusted EBITDA - Enterprise</td>
<td>109</td>
<td>219</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$540</td>
<td>$799</td>
</tr>
</tbody>
</table>
This offering and investing in shares of our Class A common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below together with all of the other information contained in this prospectus, including our consolidated financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in shares of our Class A common stock. If any of the following risks actually occurs, our business, prospects, results of operations, and financial condition could suffer materially, the trading price of our Class A common stock could decline, and you could lose all or part of your investment. Please also see “Cautionary Note Regarding Forward-Looking Statements.” In addition, the impacts of the COVID-19 pandemic and any worsening of the economic environment may exacerbate the risks described below, any of which could have a material impact on us. This situation is changing rapidly and additional impacts may arise that we are not currently aware of.

Risks Related to Our Business and Industry

Our results of operations can be difficult to predict and may fluctuate significantly, which could result in a failure to meet investor expectations.

Our results of operations have in the past varied, and may in the future vary, significantly from period to period due to a number of factors, many of which are outside of our control, including the macroeconomic environment. These factors limit our ability to accurately predict our results of operations and include factors discussed throughout this “Risk Factors” section, including the following:

- the level of competition in our markets, including the effect of new entrants, consolidation, and technological innovation;
- macroeconomic conditions in our markets, both domestic and international, as well as the level of discretionary technology spending;
- fluctuations in demand for our solutions;
- disruptions in our business operations or target markets caused by, among other things, terrorism or other intentional acts, pandemics, such as the COVID-19 pandemic, riots, protests or political unrest, or earthquakes, floods, or other natural disasters;
- variability and unpredictability in the rate of growth in the markets in which we compete;
- technological changes in our markets;
- our ability to renew existing customers, acquire new customers, and sell additional solutions;
- execution of our business strategy and operating plan, and the effectiveness of our sales and marketing programs;
- our sales cycles, which may lengthen as the complexity of solutions and competition in our markets increases;
- the timing, size, and mix of orders from, and shipments to, enterprise customers;
- enterprise customers’ tendency to negotiate licenses and other agreements near the end of each quarter;
- product announcements, introductions, transitions, and enhancements by us or our competitors, which could result in deferrals of customer orders;
- the impact of future acquisitions or divestitures;
- changes in accounting rules and policies that impact our future results of operations compared to prior periods; and
- the need to recognize certain revenue ratably over a defined period or to defer recognition of revenue to a later period, which may impact the comparability of our results of operations across those periods.
Furthermore, a high percentage of our expenses, including those related to overhead, research and development, sales and marketing, and general and administrative functions are generally fixed in nature in the short term. As a result, if our net revenue is less than forecasted, we may not be able to effectively reduce such expenses to compensate for the revenue shortfall and our results of operations will be adversely affected. In addition, our ability to maintain or expand our operating margins may be limited given economic and competitive conditions, and we therefore could be reliant upon our ability to continually identify and implement operational improvements in order to maintain or reduce expense levels. There can be no assurance that we will be able to maintain or expand our current operating margins in the future.

The COVID-19 pandemic has affected how we are operating our business, and the duration and extent to which this will impact our future results of operations and overall financial performance remains uncertain.

The COVID-19 pandemic is having widespread, rapidly evolving, and unpredictable impacts on global society, economies, financial markets, and business practices. Federal, state and foreign governments have implemented measures to contain the virus, including social distancing, travel restrictions, border closures, limitations on public gatherings, work from home, and closure of non-essential businesses. To protect the health and well-being of our employees, partners, and third-party service providers, we have implemented work-from-home requirements, made substantial modifications to employee travel policies, and cancelled or shifted marketing and other corporate events to virtual-only formats for the foreseeable future. While we continue to monitor the situation and may adjust our current policies as more information and public health guidance become available, such precautionary measures could negatively affect our customer success efforts, sales and marketing efforts, delay and lengthen our sales cycles, or create operational or other challenges, any of which could harm our business and results of operations. In addition, the COVID-19 pandemic has disrupted the operations of many of our enterprise customers and channel partners, and may continue to disrupt their operations, for an indefinite period of time, including as a result of travel restrictions and/or business shutdowns, uncertainty in the financial markets, or other harm to their businesses and financial results, resulting in delayed purchasing decisions, extended payment terms, and postponed or cancelled projects, all of which could negatively impact our business and results of operations, including our revenue and cash flows. Further, if the COVID-19 pandemic has a substantial impact on our employees’, partners’, or third-party service providers’ health, attendance, or productivity, our results of operations and overall financial performance may be adversely impacted.

Beginning in March 2020, the U.S. and global economies have reacted negatively in response to worldwide concerns due to the economic impacts of the COVID-19 pandemic. These factors also may adversely impact consumer, enterprise, and government spending on technology as well as customers’ ability to pay for our products and services on an ongoing basis. Although we have not currently experienced a material increase in customer cancellations or a material reduction in our retention rate in 2020, we may experience such an increase in cancellations or reduction in retention rates in the future, especially in the event of a prolonged economic downturn as a result of the COVID-19 pandemic. For example, some businesses in industries particularly impacted by the COVID-19 pandemic, such as travel, hospitality, retail, and oil and gas, have significantly cut or eliminated capital expenditures at this time. Certain enterprise and government customers may also seek to renegotiate the payment terms or scope of the existing subscription or services agreements, which could adversely impact our revenues in future periods and may result in delays in accounts receivable collection. A prolonged economic downturn could adversely affect technology spending, demand for our offerings, and retention and renewal rates, any of which could have a negative impact on our financial condition, results of operations and cash flows. Any resulting instability in the financial markets could also adversely affect the value of our Class A common stock, our ability to refinance our indebtedness, and our access to capital.

The ultimate duration and extent of the impact from the COVID-19 pandemic depends on future developments that cannot be accurately forecasted at this time, such as the severity and transmission rate of the disease, the actions of governments, businesses and individuals in response to the pandemic, the extent and effectiveness of containment actions, the impact on economic activity and the impact of these and other factors...
on our employees, partners, and third-party service providers. This uncertainty also affects management’s accounting estimates and assumptions, which could result in greater variability in a variety of areas that depend on these estimates and assumptions, including those related to investments, receivables, retention rates, renewals, pricing, and sales cycles. For example, we have experienced growth and increased demand for our solutions in recent quarters, particularly with respect to our Consumer business, which may be due in part to greater demand for devices or our solutions in response to the COVID-19 pandemic. We cannot determine what, if any, portion of our growth in net revenue, the number of our Direct to Consumer customers, or any other measures of our performance during the first half of fiscal 2020 compared to the first half of fiscal 2019 was the result of such responses to the COVID-19 pandemic. However, if we are unable to successfully drive renewals of new subscriptions and retention of new customers in future periods, including any such new subscriptions or new customers that may be related to the response to the COVID-19 pandemic, or if global conditions and macroeconomic forces, including those related to the COVID-19 pandemic, reduce demand for solutions in the future, we may be unsuccessful in sustaining our recent growth rates. In addition, the extent to which the COVID-19 pandemic will continue to drive demand for devices is uncertain, and if demand for devices decreases, we may experience slower growth in future periods. These uncertainties may increase variability in our future results of operations and adversely impact our ability to accurately forecast changes in our business performance and financial condition in future periods. If we are not able to respond to and manage the impact of such events effectively or if global economic conditions do not improve, or deteriorate further, our business, financial condition, results of operations, and cash flows could be adversely affected.

The cybersecurity market is rapidly evolving and becoming increasingly competitive in response to continually evolving cybersecurity threats from a variety of increasingly sophisticated cyberattackers. If we fail to anticipate changing customer requirements or industry and market developments, or we fail to adapt our business model to keep pace with evolving market trends, our financial performance will suffer.

The cybersecurity market is characterized by continual changes in customer preferences and requirements, frequent and rapid technological developments and continually evolving market trends. We must continually address the challenges of dynamic, and accelerating market trends, such as the emergence of new cybersecurity threats, the continued decline in the sale of new personal computers, and the rise of mobility and cloud-based solutions, all of which make satisfying our customers’ diverse and evolving needs more challenging. In addition, many of our enterprise customers operate in industries characterized by rapidly changing technologies and business plans, which require them to adapt quickly to increasingly complex cybersecurity requirements.

The technology underlying our solutions is particularly complex because it must effectively and efficiently identify and respond to new and increasingly sophisticated threats while meeting other stringent technical requirements in areas of performance, usability, and availability. Although our customers expect new solutions and enhancements to be rapidly introduced to respond to new cybersecurity threats, product development requires significant investment, the efficacy of new technologies is inherently uncertain, and the timing for commercial release and availability of new solutions and enhancements is uncertain. We may be unable to develop new technologies to keep pace with evolving threats or experience unanticipated delays in the availability of new solutions, and therefore fail to meet customer expectations. If we fail to anticipate or address the evolving and rigorous needs of our customers, or we do not respond quickly to shifting customer expectations or demands by developing and releasing new solutions or enhancements that can respond effectively and efficiently to new cybersecurity threats on an ongoing and timely basis, our competitive position, business, and financial results will be harmed.

The introduction of new products or services by competitors, market acceptance of products or services based on emerging or alternative technologies, and the evolution of new standards, whether formalized or otherwise, could each render our existing solutions obsolete or make it easier for other products or services to compete with our solutions. In addition, modern cyberattackers are skilled at adapting to new technologies and developing new methods of breaching customers. For example, ransomware attacks have increased in frequency.

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and complexity, and the costs associated with successful ransomware attacks have increased. We must continuously work to ensure our solutions protect against the increased volume and complexity of the cybersecurity threat landscape. Changes in the nature of advanced cybersecurity threats could result in a shift in cybersecurity spending and preferences away from solutions such as ours. In addition, any changes in compliance standards or audit requirements applicable to or enterprise and government customers that deemphasize the types of controls, monitoring, and analysis that our solutions provide would adversely impact demand for our solutions. If our solutions are not viewed by our customers as necessary or effective in addressing their cybersecurity needs, then our revenues may not grow as quickly as expected, or may decline, and our business could suffer.

We cannot be sure that we will accurately predict how the cybersecurity markets in which we compete or intend to compete will evolve. Failure on our part to anticipate changes in our markets and to develop solutions and enhancements that meet the demands of those markets will significantly impair our business, financial condition, results of operations, and cash flows.

We operate in a highly competitive environment, and we expect competitive pressures to increase in the future, which could cause us to lose market share.

The markets for our solutions are highly competitive, and we expect both the requirements and pricing competition to increase, particularly given the increasingly sophisticated attacks, changing customer preferences and requirements, current economic pressures, and market consolidation. Competitive pressures in these markets may result in price reductions, reduced margins, loss of market share and inability to gain market share, and a decline in sales, any one of which could seriously impact our business, financial condition, results of operations, and cash flows.

In the consumer cybersecurity market, we face competition from players, such as NortonLifeLock, Avast/AVG, Kaspersky, Trend Micro, ESET, and Microsoft, which expanded from desktop anti-malware into mobile, security, VPN, and identity protection among others. At the same time we compete with point-tool providers, such as Cujo and Dojo in the home IoT space or AnchorFree, ExpressVPN, and ProtonVPN in the network security space, across our full consumer offering. In the enterprise cybersecurity market, we compete both with larger integration providers, such as Symantec (a division of Broadcom), Palo Alto Networks, Sophos, Microsoft, Trend Micro, and Sentinel One in the endpoint, networking, and CASB space, as well as with point solutions Cylance (a division of BlackBerry) focusing on a subset of the cybersecurity market. These competitors include Crowdstrike, Carbon Black (a division of VMware), and Tanium in the endpoint market, Netskope, and Bitglass in the CASB market, IBM and Cisco in network intrusion, Forcepoint, and Zscaler in the SWG market, and IBM, Splunk, Micro Focus, Dell, and LogRhythm in the security operations market.

In addition to competing with these and other vendors directly for sales to end-users of our products, we compete with several of them for the opportunity to have our products bundled with the product offerings of our strategic partners, including computer hardware OEMs, ISPs, MSSPs, and other distribution partners. Our competitors could gain market segment share from us if any of these strategic partners replace our solutions with those of our competitors or if these partners more actively promote our competitors’ offerings than ours. In addition, vendors who have bundled our products with theirs may choose to bundle their products with their own or other vendors’ software or may limit our access to standard product interfaces and inhibit our ability to develop products for their platform. We also face competition from many smaller companies that specialize in particular segments of the markets in which we compete, including Crowdstrike, VMware, Netskope, and Zscaler. In the future, further product development by these providers could cause our products and services to become redundant or lose market segment share, which could significantly impact our sales and financial results.

We face growing competition from network equipment, computer hardware manufacturers, large operating system providers, telecommunication companies, and other large or diversified technology companies. Examples of large, diversified competitors include Microsoft, International Business Machines Corporation, and Dell Technologies. Large vendors of hardware or operating system software increasingly incorporate cybersecurity
functionality into their products and services, and enhance that functionality either through internal development or through strategic alliances or acquisitions. Similarly, telecommunications providers are increasingly investing in the enhancement of the cybersecurity functionality in the devices and services they offer. Additionally, large cloud platforms, such as Amazon Web Services ("AWS"), Google Cloud and Microsoft Azure, may expand or commence providing native cybersecurity functionality directly on the platform such that our current and potential customers forego purchasing cybersecurity solutions from us. Certain of our current and potential competitors may have competitive advantages such as longer operating histories, more extensive international operations, larger product development and strategic acquisition budgets, and greater financial, technical, sales, and marketing resources than we do. Such competitors also may have well-established relationships with our current and potential customers and extensive knowledge of our industry and the markets in which we compete and intend to compete. As a result, such competitors may be able to respond more quickly to new or emerging technologies and changes in customer requirements, or to devote greater resources to the development, marketing, sale, and support of their products. These competitors have made strategic acquisitions or established cooperative relationships among themselves or with other providers, thereby increasing their ability to provide a broader suite of products, and potentially causing customers to decrease purchases of, or defer purchasing decisions with respect to, our products and services. Additionally, some or all of our solutions may rely upon access to certain hardware or software interfaces. These competitors may limit our access to such interfaces or may provide greater or earlier access available to others. These actions could adversely affect the operations of our products relative to competitors or render our solutions inoperative.

Cybersecurity protection is also offered by certain of our competitors at prices lower than our prices or, in some cases, free of charge. Other companies bundle their own or our competitors’ lower-priced or free cybersecurity products with their own computer hardware or software product offerings in a manner that discourages users from purchasing our products and subscriptions. Our competitive position could be adversely affected to the extent that our current or potential customers perceive these cybersecurity products as replacing the need for our products or if they render our solutions unmarketable—even if these competitive products are inferior or more limited than our products and services. The expansion of these competitive trends could have a significant negative impact on our sales and financial results by causing, among other things, price reductions of our products, reduced profitability, and loss of market share.

To compete successfully, we must continue to develop new solutions and enhance existing solutions, effectively adapt to changes in the technology or rights held by our competitors, respond to competitive strategies, and effectively adapt to technological changes within the consumer and enterprise markets. If we are unsuccessful in responding to our competitors, our competitive position and our financial results could be adversely affected.

Our business depends substantially on our ability to retain customers and to expand sales of our solutions to them. If we are unable to retain our customers or to expand our product offerings, our future results of operations will be harmed.

For us to maintain or improve our results of operations in a market that is rapidly evolving and places a premium on market-leading solutions, it is important that we retain existing customers and that our customers expand their use of our solutions. Our customers have no obligation to renew their contracts with us upon their expiration. Even if they do renew with us, customers may not renew with a similar contract period or with the same or a greater amount of committed revenue to us. Retention rates may decline or fluctuate as a result of a number of factors, including but not limited to the level of our customers’ satisfaction or dissatisfaction with our solutions, our prices and the prices of competing products or services, mergers and acquisitions affecting our customers, mergers and acquisitions by our competitors, the effects of global economic conditions, new technologies, changes in our customers’ spending levels, and changes in how our customers perceive the cybersecurity threats. In addition, a significant portion of our renewals in our Consumer segment come from autorenewal arrangements incorporated within our solutions. Furthermore, any changes in the laws regarding autorenewal arrangements could adversely affect our ability to retain consumer customers and harm our financial condition and operating performance.
In addition, our ability to generate revenue and maintain or improve our results of operations partly depends on our ability to increase sales of and cross-sell our solutions to our existing customers. We expect our ability to successfully increase sales of and cross-sell our solutions will be one of the most significant factors influencing our growth. We may not be successful in cross-selling our solutions because our customers may find our additional solutions unnecessary or unattractive. Our failure to sell additional solutions to our existing and new customers could adversely affect our ability to grow our business.

**Over the last several years, we have pursued a variety of strategic initiatives designed to optimize and reinforce our cybersecurity platform. If the benefits of these initiatives are less than we anticipate, or if the realization of such benefits is delayed, our business and results of operations may be harmed.**

Over the last several years, we have pursued a variety of strategic initiatives designed to optimize and reinforce our cybersecurity platform, including investing in new routes to market and partnerships, refining our go-to-market strategies for our Consumer and Enterprise businesses, rationalizing our Enterprise portfolio to reorient our focus and resources to products that align with our device-to-cloud strategy, and adding new capabilities and products through several strategic acquisitions. The anticipated benefits of these initiatives may not be fully realized, if at all, until future periods. For example, as we continue to execute on the reorientation of our Enterprise business and refine our Enterprise go-to-market strategy, we currently expect our Enterprise net revenue to continue to decline in the near term, and we expect the performance of our Consumer segment to continue to have a greater impact on our consolidated Company performance. However, if we do not achieve the anticipated benefits from these and our other strategic initiatives, or if the achievement of such anticipated benefits is delayed, the performance of our Enterprise and Consumer segments could be harmed, and our financial condition, results of operations, and cash flows may be adversely affected.

**We rely significantly on third-party partners to facilitate the sale of our products and solutions.**

We sell a significant portion of our solutions through third-party intermediaries such as affiliates, retailers, ecommerce, PC OEMs, and other distribution channel partners (we refer to them collectively as “channel partners”). Three of our largest channel partners are Ingram Micro Inc., Arrow Electronics, Inc., and Tech Data Corporation, and accounted for 15%, 9%, and 8% of our net revenue, respectively, for the fiscal year 2018, 15%, 7%, and 6% of our net revenue, respectively, for fiscal 2019, and 15%, 3%, and 5% of our net revenue, respectively, for the 26-week period ended June 27, 2020. Our agreements with these channel partners typically provide that each partner agrees to sell and distribute our products within certain territories for one year. These agreements are nonexclusive and are non-transferable by our partners, and they typically automatically renew unless terminated by either party after providing prior written notice. If we lost a significant channel partner or if a significant channel partner becomes insolvent, our results of operations could be harmed. Although we provide support to these channel partners through our direct sales and marketing activities, we depend upon these channel partners to generate sales opportunities and to independently manage the sales process for opportunities with which they are involved. In order to increase our revenue, we expect we will need to maintain our existing channel partners and continue to train and support them, as well as add new channel partners and effectively train, support, and integrate them with our sales process. Additionally, the introduction of new solutions and our entry into any new markets may require us to develop appropriate channel partners and to train them to sell effectively. If we are unsuccessful in these efforts, our ability to grow our business will be limited and our business, financial condition, results of operations, and cash flows will be adversely affected.

Sales by our channel partners may vary significantly from period to period. Our channel partners operations may also be negatively impacted by other effects the COVID-19 pandemic is having on the global economy, such as increased credit risk of end customers and the uncertain credit markets. Our agreements with our channel partners are generally nonexclusive and may be terminated at any time without cause. Furthermore, our channel partners frequently market and distribute competing products and may, from time to time, place greater emphasis on the sale of these products due to pricing, promotions, and other terms offered by our competitors. Some of our channel partners may also experience financial difficulties, which could adversely impact our collection of the
related accounts receivable. These factors can make it difficult for us to forecast our financial results accurately and can cause our financial results to fluctuate unpredictably.

While we require that our channel partners comply with applicable laws and regulations, they could engage in behavior or practices that expose us to legal or reputational risk. We could be subject to claims and liability as a result of the activities, products, or services of our channel partners. Even if these claims do not result in liability to us, investigating and defending these claims could be expensive, time consuming, and result in adverse publicity that could negatively affect our business, results of operations or financial condition.

If we fail to manage our growing distribution channels successfully, these channels may fail to perform as we anticipate, which could reduce our sales, increase our expenses, and weaken our reputation and competitive position.

If we fail to maintain relationships with our channel partners, or if we must agree to significant adverse changes in the terms of our agreements with these partners, it may have an adverse effect on our ability to successfully and profitably market and sell our products and solutions.

We have entered into contracts with our channel partners to market and sell our products and solutions. Most of these contracts are on a non-exclusive basis. However, under contracts with some of our channel partners, we may be bound by provisions that restrict our ability to market and sell our solutions to potential customers. Our arrangements with some of these channel partners involve negotiated payments to them based on percentages of revenues that they generate. If the payments prove to be too high, we may be unable to realize acceptable margins, but if the payments prove to be too low, the channel partners may not be motivated to market and sell our solutions and, thus, produce a sufficient volume of revenues for us. The success of these contractual arrangements will depend in part upon the channel partners’ own competitive, marketing, and strategic considerations, including the relative advantages of using alternative solutions being developed and marketed by them or our competitors. If any of these channel partners are unsuccessful in marketing our solutions or seeks to amend the financial or other terms of the contracts that we have with them, we will need to broaden our marketing efforts to increase focus on the solutions such channel partners sell and alter our distribution strategy, which may divert our planned efforts and resources from, and cause delays regarding, other projects. In addition, as part of the packages these channel partners market and sell, they may offer a choice to their customers between solutions that we supply and similar solutions offered by our competitors or by the channel partners directly. If our solutions are not chosen for inclusion in these packages, the revenues we earn from our channel partner relationships may decrease.

A significant portion of our Consumer segment revenue is derived from sales through our PC OEM partners that bundle our products with their products. Our reliance on this sales channel is significantly affected by our partners’ sales of new products into which our products or services are bundled. Our revenue from sales through our PC OEM partners is affected primarily by the number of personal computers on which our products are bundled, the geographic mix of their sales, and the rate at which consumers purchase or subscribe to the bundled products. Our PC OEM partners are also in a position to exert competitive pricing pressure. The rate at which consumers purchase or subscribe to the bundled products is affected by other factors, including other terms with the OEM. The continued decline in the PC market as the market shifts towards mobility has increased competition for PC OEMs’ business and gives PC OEMs leverage to demand financial concessions from us in order to secure their business. These agreements require a significant commitment of resources and capital. There is no guarantee we will have sufficient resources to maintain these agreements or secure new PC OEM partners. Even if we negotiate what we believe are favorable terms when we first establish a relationship with a PC OEM, at the time of the renewal of the agreement, we may be required to renegotiate our agreement with them on less favorable terms. Lower net prices for our products or other financial concessions would adversely impact our financial results. Any adverse changes in our relationship with our channel partners could have an adverse effect on our business and financial results.
We may need to change our pricing models to compete successfully.

The intense competition we face in the cybersecurity market, in addition to general economic and business conditions (including the economic downturn resulting from the COVID-19 pandemic), can result in downward pressure on the prices of our solutions. If our competitors offer significant discounts on competing products or services, or develop products or services that our customers believe are more valuable or cost-effective, we may be required to decrease our prices or offer other sales incentives in order to compete successfully. Additionally, if we increase prices for our solutions, demand for our solutions could decline as customers adopt less expensive competing products and our market share could suffer. If we do not adapt our pricing models to reflect changes in customer use of our products or changes in customer demand, our revenues could decrease.

Additionally, our business may be affected by changes in the macroeconomic environment. In addition, a weakening of economic conditions or significant uncertainty regarding the stability of financial markets could adversely impact our business, financial condition, results of operations, and cash flows, especially in the event of a prolonged economic downturn or a worsening of current conditions as a result of the COVID-19 pandemic. Impacts could include longer sales cycles, pressure to lower prices for our solutions or to delay or reduce any future price increase, extended billing or payment terms, decreased renewal rates, a reduction in the rate of adoption of our solutions by new customers, and a lower rate of current customers purchasing upgrades. Customers also may change the way in which they pay for solutions, such as buying solutions based upon consumption, which could require us to change our pricing model for some or all of our solutions, thereby reducing or delaying revenue. Finally, the increasing prevalence of cloud-based solutions and emerging security delivery models may unfavorably impact pricing in both our solutions that are not deployed via the cloud, which could reduce our revenues and profitability.

Any broad-based change to our pricing strategy could cause our revenues to decline or could delay future sales as our sales force implements and our customers adjust to the new pricing terms. We or our competitors may bundle products for promotional purposes or as a long-term go-to-market or pricing strategy or provide price guarantees to certain customers as part of our overall sales strategy. These practices could, over time, significantly limit our flexibility to change prices for existing solutions and to establish prices for new or enhanced products and services. Any such changes could reduce our margins and adversely affect our results of operations.

If our solutions have or are perceived to have defects, errors, or vulnerabilities, or if our solutions fail or are perceived to fail to detect, prevent, or block cyberattacks, including in circumstances where customers may fail to take action on attacks identified by our solutions, our reputation and our brand could suffer, which would adversely impact our business, financial condition, results of operations, and cash flows.

Many of our solutions are complex and may contain design defects, vulnerabilities, or errors that are not detected before their commercial release. Our solutions also provide our customers with the ability to customize a multitude of settings, and it is possible that a customer could misconfigure our solutions or otherwise fail to configure our solutions in an optimal manner. Such defects, errors, and misconfigurations of our solutions could cause our solutions to be vulnerable to cybersecurity attacks, cause them to fail to perform the intended operation, or temporarily interrupt the operations of our customers. In addition, since the techniques used by adversaries change frequently and generally are not recognized until widely applied, there is a risk that our solutions would not be able to address certain attacks. Moreover, our solutions and infrastructure technology systems could be targeted by bad actors and attacks specifically designed to disrupt our business and undermine the perception that our solutions are capable of providing their intended benefits, which, in turn, could have a serious impact on our reputation. The risk of a cybersecurity attack has increased during the current COVID-19 pandemic as more individuals are working from home and utilizing home networks for the transmission of sensitive information. Any cybersecurity vulnerability or perceived cybersecurity vulnerability of our solutions or systems could adversely affect our business, financial condition, results of operations, and cash flows.
Changing, updating, enhancing, and creating new versions of our solutions may cause errors or performance problems in our products and solutions, despite testing and quality control. We cannot be certain that defects, errors, or vulnerabilities will not be found in any such changes, updates, enhancements, or new versions, especially when first introduced. Even if new or modified solutions do not have such problems, the solutions may have difficulties in installing, we may have difficulty providing any necessary training and support to customers, and our customers may not follow our guidance on appropriate training, support, and implementation for such new or modified solutions. In addition, changes in our technology may not provide the additional functionality or other benefits that were expected. Implementation of changes in our technology also may cost more or take longer than originally expected and may require more testing than initially anticipated. While new solutions are generally tested before they are used in production, we cannot be sure that the testing will uncover all problems that may occur in actual use.

If any of our customers are affected by a cybersecurity attack (such as becoming infected with malware) while using our solutions, such customers could be disappointed with our solutions or perceive that our solutions failed to perform their intended purpose, regardless of whether our solutions operated correctly, blocked, or detected the attack or would have blocked or detected the attack if configured properly. If any of our customers experience a security breach, such customers and the general public may believe that our solutions failed. Furthermore, if any customer publicly known to use any of our solutions is the subject of a cyberattack that becomes publicized, our other current or potential customers may choose to purchase alternative solutions from our competitors, or supplement our solution with our competitors’ products. Real or perceived security breaches of our customers could cause disruption or damage or other negative consequences and could result in negative publicity about us, reduced sales, damage to our reputation and competitive position, increased expenses, and customer relations problems.

Furthermore, our solutions may fail to detect or prevent malware, viruses, worms, or similar threats for any number of reasons, including our failure to enhance and expand our solutions to reflect market trends and new attack methods, new technologies and new operating environments, the complexity of our customers’ environment and the sophistication and coordination of threat actors launching malware, ransomware, viruses, intrusion devices, and other threats. In addition, from time to time, firms test our solutions against other security products and services. Our solutions may fail to detect or prevent threats in any particular test for a number of reasons, including misconfiguration. To the extent potential customers, industry analysts, or testing firms believe that the occurrence of a failure of our solutions to detect or prevent any particular threat is a flaw or indicates that our solutions do not provide significant value or are inferior to competing solutions, our reputation and business could be harmed. Failure to keep pace with technological changes in the cybersecurity industry and changes in the threat landscape could also adversely affect our ability to protect against security breaches and could cause us to lose customers.

We may also incur significant costs and operational consequences of investigating, remediating, eliminating, and putting in place additional tools and devices designed to prevent actual or perceived security breaches and other incidents, as well as the costs to comply with any notification obligations resulting from any security incidents.

Failure to adapt our product and service offerings to changing customer demands, or lack of customer acceptance of new or enhanced solutions, could harm our business and financial results.

Our success depends on developing new solutions and enhancing existing solutions to reflect market trends, new technologies, and new operating environments, and the rapidly evolving needs of our customers. For example, we must continue to expand our cybersecurity solutions to address the increasingly broad range of mobile devices, continuing growth in remote access to enterprises, and the proliferation of IP-connected embedded systems and devices, the “Internet of Things,” and the continued growth of hybrid, virtual and cloud-based environments. We also must continue to develop new and enhanced solutions capable of protecting against emerging technologies as they are being released and adopted by our customers. Our failure to continually
innovate and produce new and refreshed solutions to satisfy customers changing preferences, maintain compatibility with evolving operating systems, and effectively compete with other market offerings in a timely and cost-effective manner may harm our ability to renew contracts with existing customers and to create or increase demand for our solutions, which may adversely impact our results of operations. We must also continuously work to ensure that our products and services meet changing industry certifications and standards. We may invest in complementary or competitive businesses, products, or technologies to help us keep pace with market changes, but these investments may not result in products that are important to our customers or we may not realize the benefits of these investments.

Our future financial results will depend in part on whether our new or updated products and solutions receive sufficient customer acceptance. Achieving market acceptance for new or updated solutions is likely to require substantial marketing efforts and expenditure of significant funds to create awareness and demand by customers. In addition, deployment of new or updated solutions may require the use of additional resources for training our existing direct sales force and customer service personnel and for hiring and training additional salespersons and customer service personnel. Failure to achieve broad penetration in target markets with respect to new or updated solutions could have an adverse impact on our business, results of operations, or financial condition.

Our investments in new or enhanced solutions may not yield the benefits we anticipate.

The success of our business depends on our ability to develop new technologies and solutions, to anticipate future customer requirements and applicable industry standards, and to respond to the changing needs of our customers, competitive technological developments, and industry changes. Within our consumer business, we are presently investing in cybersecurity solutions to protect consumers’ PC and mobile devices, identity, privacy, family safety, web browsing, IoT, and smart home devices. For our enterprise customers, we are investing in developing a cybersecurity platform that addresses the entire threat defense life cycle, with solutions spanning endpoint security, cloud security, network security, and data and content protection, with unified management, threat intelligence, analytics and automation. We intend to continue to invest in these cybersecurity solutions by adding personnel and other resources to our business. We will likely recognize costs associated with these investments earlier than the anticipated benefits. If we do not achieve the anticipated benefits from these investments, or if the achievement of these benefits is delayed, our business, financial condition, results of operations, and cash flows may be adversely affected.

The process of developing new technologies is time consuming, complex, and uncertain, and requires the commitment of significant resources well in advance of being able to fully determine market requirements and industry standards. Furthermore, we may not be able to timely execute new technical product or solution initiatives for a variety of reasons such as errors in planning or timing, technical difficulties that we cannot timely resolve, or a lack of appropriate resources. Complex solutions like ours may contain undetected errors or compatibility problems, particularly when first released, which could delay or adversely impact market acceptance. We may also experience delays or unforeseen costs related to integrating products we acquire with products we develop, because we may be unfamiliar with errors or compatibility issues of products we did not develop ourselves. Any of these development challenges, or the failure to appropriately adjust our go-to-market strategy to accommodate new offerings, may result in delays in the commercial release of new solutions or may cause us to terminate development of new solutions prior to commercial release. Any such challenges could result in competitors bringing products or services to market before we do and a related decrease in our market segment share and net revenue. Our inability to introduce new solutions and enhancements in a timely and cost-effective manner, or the failure of these new solutions or enhancements to achieve market acceptance and comply with industry standards and governmental regulation, could seriously harm our business, financial condition, results of operations, and cash flows.
A portion of our revenue is generated by sales to government entities, which are subject to a number of uncertainties, challenges, and risks.

We currently sell many of our solutions to various government entities, and we may in the future increase sales to government entities. Sales to government entities are subject to a number of risks. Selling to government entities can be highly competitive, expensive, and time consuming, often requiring significant upfront time and expense without any assurance that we will complete a sale. In the event that we are successful in being awarded a government contract, such award may be subject to appeals, disputes, or litigation, including, but not limited to, bid protests by unsuccessful bidders. Government demand and payment for our solutions may be impacted by public sector budgetary cycles and funding authorizations, with funding reductions or delays adversely affecting public sector demand for our solutions. The majority of our sales to government agencies are completed through our network of channel partners, and government entities may have statutory, contractual, or other legal rights to terminate contracts with our channel partners for convenience or due to a default. For purchases by the U.S. federal government, the government may require certain products to be manufactured in the United States and other high cost manufacturing locations, and we may not manufacture all products in locations that meet government requirements, and as a result, our business and results of operations may suffer. Contracts with governmental entities may also include preferential pricing terms, including, but not limited to, “most favored customer” pricing. Additionally, we may be required to obtain special certifications to sell some or all of our solutions to government or quasi-government entities. Such certification requirements for our solutions may change, thereby restricting our ability to sell into the federal government sector until we have attained the revised certification. If our products and subscriptions are late in achieving or fail to achieve compliance with these certifications and standards, or our competitors achieve compliance with these certifications and standards, we may be disqualified from selling our products and subscriptions to such governmental entities, or be at a competitive disadvantage, which would harm our business, results of operations, and financial condition. There are no assurances that we will find the terms for obtaining such certifications to be acceptable or that we will be successful in obtaining or maintaining the certifications.

As a government contractor or subcontractor, we must comply with laws, regulations, and contractual provisions relating to the formation, administration, and performance of government contracts and inclusion on government contract vehicles, which affect how we and our partners do business with government agencies. As a result of actual or perceived noncompliance with government contracting laws, regulations, or contractual provisions, we may be subject to non-ordinary course audits and internal investigations which may prove costly to our business financially, divert management time, or limit our ability to continue selling our products and services to our government customers. These laws and regulations may impose other added costs on our business, and failure to comply with these or other applicable regulations and requirements, including non-compliance in the past, could lead to claims for damages from our channel partners, downward contract price adjustments or refund obligations, civil or criminal penalties, and termination of contracts and suspension or debarment from government contracting for a period of time with government agencies. Any such damages, penalties, disruption, or limitation in our ability to do business with a government would adversely impact, and could have a material adverse effect on, our business, results of operations, financial condition, public perception, and growth prospects.

Our business could be adversely affected if our employees cannot obtain and maintain required security clearances or we cannot maintain a required facility security clearance, or we do not comply with legal and regulatory obligations regarding the safeguarding of classified information.

A significant percentage of our U.S. government contract revenue is derived from contracts that require our employees to maintain various levels of security clearances, and may require us to maintain a facility security clearance, to comply with Department of Defense (“DoD”) requirements. The DoD has strict security clearance requirements for personnel who perform work in support of classified programs. In general, access to classified information, technology, facilities, or programs are subject to additional contract oversight and potential liability. In the event of a security incident involving classified information, technology, facilities, programs, or personnel
holding clearances, we may be subject to legal, financial, operational, and reputational harm. We are limited in our ability to provide specific information about these classified programs, their risks, or any disputes or claims relating to such programs. As a result, investors have less insight into our classified programs than our other businesses and therefore less ability to fully evaluate the risks related to our classified business or our business overall.

Obtaining and maintaining security clearances for employees involves a lengthy process, and it is difficult to identify, recruit, and retain employees who already hold security clearances. If our employees are unable to obtain security clearances in a timely manner, or at all, or if our employees who hold security clearances are unable to maintain their clearances or terminate employment with us, then a customer requiring classified work could terminate an existing contract or decide not to renew the contract upon its expiration. To the extent we are not able to obtain or maintain a facility security clearance, we may not be able to bid on or win new classified contracts, and existing contracts requiring a facility security clearance could be terminated.

If we are unable to attract, train, motivate, and retain senior management and other qualified personnel, our business could suffer.

Our success depends in large part on our ability to attract and retain senior management personnel, as well as technically qualified and highly skilled sales, consulting, technical, finance, and marketing personnel. It could be difficult, time consuming, and expensive to identify, recruit, and onboard any key management member or other critical personnel. Competition for highly skilled personnel is often intense, particularly in the markets in which we operate including Silicon Valley. If we are unable to attract and retain qualified individuals, our ability to compete in the markets for our products could be adversely affected, which would have a negative impact on our business and financial results. Our competitors may be successful in recruiting and hiring members of our management team or other key employees, including key employees obtained through our acquisitions, and it may be difficult for us to find suitable replacements on a timely basis, on competitive terms or at all.

Changes in management or other critical personnel may be disruptive to our business and might also result in our loss of unique skills, loss of knowledge about our business, and may result in the departure of other existing employees, customers or partners. We have experienced recent turnover in our senior management team, and further turnover in the future could adversely affect our business.

We operate in an industry with an overall shortage of skilled and experienced talent that generally experiences high employee attrition. We have experienced significant turnover over the last few years and expect that may continue. The loss of one or more of our key employees could seriously harm our business. If we are unable to attract, integrate, or retain the qualified and highly skilled personnel required to fulfill our current or future needs, our business, financial condition, results of operations, and cash flows could be harmed.

Effective succession planning is also important to the long-term success of our business. If we fail to ensure effective transfer of knowledge and smooth transitions involving key employees could hinder our strategic planning and execution. The loss of senior management or any ineffective transitions in management, especially in our sales organization, could significantly delay or prevent the achievement of our development and strategic objectives, which could adversely affect our business, financial condition, results of operations, and cash flows.

If our security measures are breached or unauthorized access to our data is otherwise obtained, our brand, reputation, and business could be harmed, and we may incur significant liabilities.

As a cybersecurity leader, we are a high-profile target for data breaches, cyberattacks, and other intentional disruptions of our systems and our solutions. Our networks and solutions may have vulnerabilities that may be targeted by hackers and could be targeted by attacks specifically designed to disrupt our business, access our network, source code or other data, and harm our reputation. Similarly, experienced computer programmers or other sophisticated individuals or entities, including malicious hackers, state-sponsored organizations, criminal
networks, and insider threats including actions by employees and third-party service providers, may attempt to penetrate our network security or the security of our systems and websites, and misappropriate proprietary information or cause interruptions of our solutions, including the operation of the global civilian cyber intelligence threat network. This risk has increased during the current COVID-19 pandemic as more individuals are working from home and utilizing home networks for the transmission of sensitive information. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently, often are not recognized until launched against a target, and may originate from less regulated or remote areas around the world. As a result, we may be unable to proactively prevent these techniques, implement adequate preventative or reactionary measures, react to or address any attack or incident in a timely manner or enforce the laws and regulations that govern such activities. Such attacks may go undetected for a period of time complicating our ability to respond effectively. In addition, it is possible that hardware failures, human errors (including being subject to phishing attacks, social engineering techniques, or similar methods) or errors in our systems could result in data loss or corruption, or cause the information that we collect to be incomplete or contain inaccuracies. We may not be able to correct any security flaws or vulnerabilities promptly, or at all. A breach of our network security and systems or other events that cause the loss or public disclosure of, or access by third parties to, our systems or data that we maintain or process, or the perception that any of these have occurred, could have serious negative consequences for our business, including possible fines, penalties and damages, reduced demand for our solutions, an unwillingness of our customers to use our solutions, harm to our brand and reputation, and time consuming and expensive litigation. In addition, such a security breach could impair our ability to operate our business, including our ability to provide subscription and support services to our customers. Additionally, our service providers may suffer or be perceived to suffer, data security breaches or other incidents that may compromise data stored or processed for us that may give rise to any of the foregoing. Any of these negative outcomes could adversely impact our business and results of operations.

Furthermore, while our errors and omissions insurance policies include liability coverage for certain of these matters, if we experience a widespread security breach or other incident, we could be subject to indemnity claims or other damages that exceed our insurance coverage. We also cannot be certain that our insurance coverage will be adequate for data handling or data security liabilities actually incurred, that insurance will continue to be available to us on economically reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, including our financial condition, results of operations, and reputation.

We operate globally and are subject to significant business, economic, regulatory, social, political, and other risks in many jurisdictions.

Global or regional conditions may harm our financial results. We have operations in many countries and our business activities are concentrated in certain geographic areas including without limitation the Asia Pacific (“APAC”), Europe, Middle-East, and Africa (“EMEA”), and Latin American Region (“LAR”) regions. We derived 46.6% of our net revenue from international customers for fiscal 2019. As a result, our domestic and international operations and our financial results may be adversely affected by a number of factors outside of our control, including:

- global and local economic conditions;
- differing employment practices and labor issues;
- formal or informal imposition of new or revised export and/or import and doing-business regulations, including trade sanctions, taxes, and tariffs, which could be changed without notice;
- regulations or restrictions on the use, import, or export of encryption technologies that could delay or prevent the acceptance and use of encryption products and public networks for secure communications;
compliance with evolving foreign laws, regulations, and other government controls addressing privacy, data protection, data localization, and data security;

ineffective legal protection of our intellectual property rights in certain countries;

increased uncertainties regarding social, political, immigration, and trade policies in the United States and abroad, such as those caused by recent U.S. legislation and the withdrawal of the United Kingdom (the “U.K.”) from the European Union (the “E.U.”), which is commonly referred to as “Brexit;”

geopolitical and security issues, such as armed conflict and civil or military unrest, crime, political instability, human rights concerns, and terrorist activity;

natural disasters, public health issues, pandemics (such as the COVID-19 pandemic), and other catastrophic events;

inefficient infrastructure and other disruptions, such as supply chain interruptions and large-scale outages or unreliable provision of services from utilities, transportation, data hosting, or telecommunications providers;

other government restrictions on, or nationalization of, our operations in any country, or restrictions on our ability to repatriate earnings from a particular country;

seasonal reductions in business activity in the summer months in Europe and in other periods in other countries;

costs and delays associated with developing software and providing support in multiple languages;

greater difficulty in identifying, attracting, and retaining local qualified personnel, and the costs and expenses associated with such activities;

longer payment cycles and greater difficulties in collecting accounts receivable; and

local business and cultural factors that differ from our normal standards and practices, including business practices that we are prohibited from engaging in by U.S. Foreign Corrupt Practices Act of 1977 (“FCPA”) and other anti-corruption laws and regulations.

Research and development risks. We employ engineers in a number of jurisdictions outside the United States. In many of these jurisdictions the laws relating to the protection of rights in technology and intellectual property are less strict than the laws in the United States or not enforced to the same extent as they are enforced in the United States. As a result, in some foreign jurisdictions we may be subject to heightened attempts to gain unauthorized access to our information technology systems or surreptitiously introduce software into our products. These attempts may be the result of hackers or others seeking to harm us, our products, or our customers. We have implemented various measures to manage our risks related to these disruptions, but these measures may be insufficient, and a system failure or security breach could negatively impact our business, financial condition, results of operations, and cash flows. The theft or unauthorized use or publication of our trade secrets and other confidential or proprietary business information as a result of such an incident could negatively impact our competitive position. In addition, we may incur additional costs to remedy the damages caused by these disruptions or security breaches.

Other operating risks. Additional risks of international business operations include the increased costs of establishing, managing, and coordinating the activities of geographically dispersed and culturally diverse operations (particularly sales and support and shared service centers) located on multiple continents in a wide range of time zones.

If we are unable to increase sales of our solutions to new customers, our future results of operations may be harmed.

An important part of our growth strategy involves continued investment in direct marketing efforts, channel partner relationships, our sales force, and infrastructure to add new customers. The number and rate at which new
customers may purchase our products and services depends on a number of factors, including those outside of our control, such as customers’ perceived need for our solutions, competition, general economic conditions, market transitions, product obsolescence, technological change, shifts in buying patterns, the timing and duration of hardware refresh cycles, financial difficulties and budget constraints of our current and potential customers, public awareness of security threats to IT systems, and other factors. These new customers, if any, may renew their contracts with us and purchase additional solutions at lower rates than we have experienced in the past, which could affect our financial results.

Our ability to maintain customer satisfaction depends in part on the quality of our technical support services, and increased demands on those services may adversely affect our relationships with our customers and negatively impact our financial results.

We offer technical support services with many of our solutions. We may be unable to respond quickly enough to accommodate short-term increases in customer demand for support services. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors or to successfully integrate support for our customers. Further customer demand for these services, without corresponding revenue, could increase costs and adversely affect our results of operations.

We have outsourced a substantial portion of our worldwide consumer support functions to third-party service providers. If these companies encounter financial difficulties, experience service disruptions, do not maintain sufficiently skilled workers and resources to satisfy our contracts or otherwise fail to perform at an acceptable level under these contracts, the level of support services to our customers may be significantly disrupted, which could materially harm our relationships with these customers.

We derive revenue from the sale of security products, subscriptions, support and maintenance, professional services, or a combination of these items, which may decline. Certain of this revenue is recognized either over the technology-constrained life or over the term of the relevant service period. Therefore, downturns or upturns in these sales will not be immediately reflected in full in our results of operations.

Our sales may decline and fluctuate as a result of a number of factors, including our customers’ level of satisfaction with our products and services, the prices of our products and services, the prices of products and services offered by our competitors, reductions in our customers’ spending levels, and other factors beyond our control. If our sales decline, our revenue and revenue growth may decline, and our business will suffer. We recognize revenue as control of the goods and services is transferred to our customer. For certain of our software licenses or hardware, this control is transferred over time with revenue recognized over the term of the technology constrained customer life, generally four to five years, or over the applicable contract term. These contracts typically have terms of one to three years. As a result, a majority of revenue we report each quarter is the recognition of deferred revenue from contracts entered into during previous quarters. Consequently, a decline in sales in any single quarter will not be fully or immediately reflected in revenue in that quarter but will continue to negatively affect our revenue in future quarters. Accordingly, the effect of significant downturns in sales is not reflected in full in our results of operations until future periods. Furthermore, it is difficult for us to rapidly increase our revenue through additional sales in any period, as revenue from the majority of contracts must be recognized over the applicable future time period. Finally, any increase in the average term of these contracts or technology constrained life of our customers would result in revenue for such contracts being recognized over longer periods of time.

The sudden and significant economic downturn or volatility in the economy in the United States and our other major markets could have a material adverse impact on our business, financial condition, results of operations, or cash flows.

We operate globally and as a result our business and revenues are impacted by global macroeconomic conditions. In recent periods, investor and customer concerns about the global economic outlook, which have
significantly increased as a result of the COVID-19 pandemic, have adversely affected market and business conditions in general. In addition, a weakening of economic conditions could lead to reductions in demand for our solutions. Weakened economic conditions or a recession could reduce the amounts that customers are willing or able to spend on our products and solutions, particularly the customers of our Consumer segment, and could make it more difficult for us to compete against less expensive and free products for new customers. In addition, our business could be negatively impacted by increased competitive pricing pressure and a decline in our customers’ creditworthiness, which could result in us incurring increased bad debt expense. Additionally, in the United States and other parts of the world, volatile or uncertain economic conditions could lead customers to not expand, terminate, or not renew existing contracts with us, or not enter into new contracts with us. Furthermore, a high percentage of our expenses, including those related to overhead, research and development, sales and marketing, and general and administrative functions are generally fixed in nature, and any decrease in revenue may reduce our profits. Additionally, if we are not able to timely and appropriately adapt to changes resulting from a weak economic environment, it could have an adverse impact on our business, financial condition, results of operations, and cash flows.

If our continued investment in the development and expansion of our cloud-based solutions is not successful, or if the cloud security market does not evolve as we anticipate, our ability to grow our business and results of operations may be harmed.

Consumers and enterprise customers increasingly demand cloud-based solutions for their cybersecurity needs. As the market for cloud-based offerings grows, pricing and delivery models are evolving, and our competitors are rapidly developing and deploying cloud-based products and services to address these demands. We are investing significant resources in the development, acquisition, and expansion of our portfolio of cloud-based solutions, such as our MVISION Cloud, Cloud Workload Security, and Virtual Network Security Platform offerings. We expect to continue this investment, which may include increased internal research and development, strategic acquisitions, equipment purchases, and long-term leases or service agreements associated with acquiring space for the data centers that support such cloud-based solutions. We cannot be certain that we will be successful in growing sales of our cloud-based solutions or generate sufficient revenue to recoup these investments.

Moreover, growing our cloud-based solutions may require us to make operational and strategic shifts to our business model and expend significant resources in building the operational infrastructure necessary to support our cloud-based offerings. We may also be required to make adjustments to our sales infrastructure and compensation models and our go-to-market strategies in order to successfully compete in this market. Certain competitors that focus primarily or exclusively on cloud-based offerings, including smaller or emerging companies, may have a competitive advantage in the cloud-based security market due to their ability to devote resources to these products without the need to continue to support a broader suite of cybersecurity solutions. We cannot be certain that we will be able to compete successfully with competitors in the cloud security market.

The success of our investments in our cloud-based solutions will also depend to a significant extent on the continued growth in the market for cloud-based products and services that address consumer and enterprise security needs. The market for cloud-based security solutions is at an early stage, and it is difficult to predict important market trends, including the potential growth, if any, of the market for these solutions. To date, some organizations have been reluctant to use cloud-based solutions because they have concerns regarding the risks associated with the reliability or security of the delivery model associated with these solutions. If other cloud-based service providers experience or are perceived to have experienced security incidents, loss of customer data, disruptions in service delivery, or other problems, the market for cloud-based solutions as a whole, including our cloud-based offerings, may be negatively impacted. If the demand for our cloud-based offerings does not continue to grow for any of the reasons discussed above, our business, results of operations, and financial condition may be harmed.
If our sales force is unable to maintain its sales productivity, sales of our solutions, and the growth of our business and financial performance could be adversely affected.

We are substantially dependent on our sales force to obtain new enterprise customers, increase sales to existing enterprise customers, and retain current enterprise customers. There is significant competition for sales personnel with the skills and technical knowledge that we require. The growth of our business will depend on our success in recruiting, training, and retaining sufficient numbers of sales personnel to support our growth. Any failure to hire, train, and adequately incentivize our sales personnel to reach target productivity levels could negatively impact our growth and operating margins. In addition, new hires require significant training and may require a lengthy onboarding process before they achieve full productivity. Our recent hires and planned hires may not become productive as quickly as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. If we are unable to recruit, train, and retain a sufficient number of productive sales personnel, sales of our solutions, and the growth of our business could be harmed.

If our solutions do not interoperate with our customers’ existing systems and devices in a manner which our customers expect, sales of our solutions could be adversely affected.

Our solutions must interoperate with our customers’ existing information technology systems, which often incorporate numerous products from third-party vendors. For example, our solutions must be compatible with new or otherwise evolving operating systems, Internet browsers, and hardware, while remaining compatible with existing and established operating systems, browsers, and hardware. Our products must interoperate with many or all of the products within our customers’ systems and devices in order to meet our customers’ requirements. This interoperability requires us to devote significant resources to ongoing product development and testing to maintain and improve the compatibility of our solutions and their performance within our customers’ systems.

Many of our enterprise customers’ systems also contain multiple generations of products that have been added over time as these systems have grown and evolved. These customers also have unique specifications, rapidly evolve, and utilize multiple protocol standards. They may also implement proprietary encryption protocols that our products are initially unable to recognize, decrypt, or otherwise manage. If we are unable to successfully manage and interpret new protocol standards and versions, if we encounter problematic network configurations or settings, or if we encounter proprietary encryption protocols, we may have to modify our solutions so that they interoperate with the information technology systems of our customers and can operate effectively. It may be necessary for us to obtain a license to implement proprietary encryption or other protocols, and there can be no assurance that we will be able to obtain such a license.

In addition, certain of our competitors may take steps to limit the interoperability of our solutions with their own products and services. Operating system, Internet browser, and other adjacent IT providers may also develop or incorporate competitive security offerings into their products and may seek to limit our own solutions interoperability with those products. Consequently, we may suffer delays in the development of our solutions or our solutions may be unable to operate effectively. This could result in decreased demand for our solutions, decreased revenue, harm our reputation, and adversely affect our business, financial condition, results of operations, and cash flows.

Our solutions operate in a wide range of complex customer systems, networks, and configurations, which could result in product errors or bugs.

Due to the complexity of our solutions, and of the customer environments in which they are installed and operated, undetected errors, failures, or bugs may occur. This risk is heightened when products are first deployed or when new or updated versions are released. Our solutions are installed and used in computing environments with different operating systems, system management software, and equipment and networking configurations, which make pre-release testing of new or updated solutions for programming or compatibility errors challenging.
Errors, failures, or bugs may not be found in new or updated products until after they are released into the market. In the past, we have discovered errors, failures, and bugs in certain of our product offerings after their release and, in some cases, have experienced delayed or lost revenues as a result of these errors. For example, certain product updates have contained errors that caused them to falsely detect viruses or computer threats that did not actually exist or cause compatibility issues with certain customer networks. These defects can damage or impair the affected customer and may cause affected devices and systems to temporarily slow or even shut down. Any such errors, failures, or bugs in products released by us could result in negative publicity, damage to our brand, loss of or delay in market acceptance of our solutions, loss of competitive position, or litigation or other claims initiated by customers or others. Addressing any such problems in the future could require significant expenditures and could cause interruptions or delays in the operation or availability of our solutions, which could cause us to lose existing or potential customers and could adversely affect our results of operations.

We have lengthy sales cycles for some of our solutions for enterprises and governments, including renewal sales, which may result in delays in, or an inability to generate, revenues from these solutions.

Some of our solutions for enterprises and governments have long sales cycles, which could range from a few months to multiple years from initial contact with the customer to completion of implementation. How and when to implement, replace, or expand a cybersecurity system, or modify or add business processes, are important decisions for our customers, and some may be reluctant to change or modify existing procedures. Sales may be subject to delays due to customers’ internal procedures for deploying new technologies and processes, and implementation may be subject to delays based on the availability of internal customer resources or external support professionals needed. We may be unable to control many of the factors that will influence the timing of the buying decisions of customers and potential customers or the pace at which installation and training may occur, including any decision by our customers to delay or cancel implementation. If we experience longer sales, installation, and implementation cycles for our solutions, we may experience delays in generating, or a decreased ability to generate, revenue from these solutions, and may experience reduced renewals, which could adversely impact on our financial results.

We rely on payment cards to receive payments and are subject to payment-related risks.

We accept a variety of payment methods, including credit cards and debit cards, as payment for certain of our consumer solutions. Accordingly, we are, and will continue to be, subject to significant and evolving regulations and compliance requirements relating to payment card processing. This includes laws governing the collection, processing and storage of sensitive consumer information, as well as industry requirements such as the Payment Card Industry Data Security Standard (“PCI-DSS”). These laws and obligations may require us to implement enhanced authentication and payment processes that could result in increased costs and liability, and reduce the ease of use of certain payment methods. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time. We are also subject to payment card association operating rules and agreements, including PCI-DSS, certification requirements, and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. If we fail to comply with these rules or requirements, or if our data security systems are breached or compromised, we may be liable for losses incurred by card issuing banks or consumers, subject to fines and higher transaction fees, lose our ability to accept credit or debit card payments from our consumers, or process electronic fund transfers or facilitate other types of payments. Any failure to comply with these requirements could significantly harm our brand, reputation, business, and results of operations.

We face risks related to enterprise customer outsourcing to system integrators and similar service providers.

Some of our enterprise customers have outsourced some or all of the management of their information technology departments to large system integrators. Some customers have also outsourced portions of their cybersecurity operations to MSSPs. If this trend continues, our established customer relationships could be
disrupted, and our solutions could be displaced by alternatives offered by system integrators and MSSPs that do not include or use our solutions. These displacements could negatively impact our financial results and have an adverse effect on our business.

**We face risks associated with past and future investments, acquisitions, and other strategic transactions.**

We may buy or make investments in complementary or competitive companies, products, and technologies, sell strategic businesses or other assets, or engage in other strategic transactions. For example, in fiscal 2018 we bolstered our consumer VPN offering through our acquisition of TunnelBear and expanded our investment in our cloud-based solutions through our acquisition of Skyhigh Networks. In fiscal 2019, we acquired Nanosec and Uplevel, and in the first half of fiscal 2020, we acquired Light Point Security, all to enhance certain of our enterprise product offerings. The consideration exchanged for an acquisition may be greater than the value we realize from the transaction. In addition, we and our Sponsors periodically evaluate our capital structure and strategic alternatives with advisors and other third parties in an effort to maximize value for our stockholders, including in the lead up to and through this offering. We cannot be certain when or if any of the discussions we have will lead to a proposal that we may find attractive, including with respect to the refinancing or repricing of some or all of our indebtedness, the sale of some or a significant portion of our assets, or other similar significant transactions. Whether in connection with such events or otherwise, we may also take other actions that impact our balance sheet and capital structure, including the payment of special dividends, the increase or decrease of regular dividends, repayment of debt, repurchases of our equity through privately negotiated transactions, as part of a tender offer, in the open market and/or through a share repurchase plan, including an accelerated share repurchase plan, or any other means permitted by law. In some cases these transactions could be with, or disproportionately benefit, one or more of our significant stockholders.

Future transactions could result in significant transactions-related charges, acceleration of some or all payments under our tax receivable agreement, disparate tax treatment for our stockholders, distraction for our management team, and potential dilution to our equity holders. In addition, we face a number of risks relating to such transactions, including the following, any of which could harm our ability to achieve the anticipated benefits of our past or future strategic transactions.

**Technology and market risk.** Cybersecurity technology is particularly complex because it must effectively and efficiently identify and respond to new and increasingly sophisticated threats while meeting other stringent technical requirements in areas of performance, usability, availability, and others. Our investments and acquisitions carry inherent uncertainty as to the efficacy of our technology roadmap. The decisions we make regarding customer requirements, market trends, market segments, and technologies may not be correct and we may not achieve the anticipated benefits of these transactions.

**Integration or separation.** Integration of an acquired company or technology is a complex, time consuming, and expensive process. The successful integration of an acquisition requires, among other things, that we integrate and retain key management, sales, research and development, and other personnel; integrate or separate the acquired products into or from our product offerings from both an engineering and sales and marketing perspective; integrate and support, or separate from, existing suppliers, distribution, and customer relationships; coordinate research and development efforts; and potentially consolidate, or prepare standalone, facilities and functions and back-office accounting, order processing, and other functions. If we do not successfully integrate an acquired company or technology, we may not achieve the anticipated benefits.

The geographic distance between sites, the complexity of the technologies and operations being integrated or separated, and disparate corporate cultures, may increase the difficulties of such integration or separation. Management’s focus on such operations may distract attention from our day-to-day business and may disrupt key research and development, marketing, or sales efforts. In addition, it is common in the technology industry for aggressive competitors to attract customers and recruit key employees away from companies during the integration phase of an acquisition.

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Internal controls, policies, and procedures. Acquired companies or businesses are likely to have different standards, controls, contracts, procedures, and policies, making it more difficult to implement and harmonize company-wide financial, accounting, billing, information, and other systems. Acquisitions of privately held and/or non-U.S. companies are particularly challenging because their prior practices in these areas may not meet the requirements of GAAP and U.S. export regulations. Furthermore, we may assume liabilities associated with past practices and the Company’s compliance with legal and regulatory requirements in the jurisdictions in which they or we operate. Any acquisitions may require that we spend significant management time and attention establishing these standards, controls, contracts, procedures, and policies.

Key employees may be difficult to retain and assimilate. The success of many strategic transactions depends to a great extent on our ability to retain and motivate key employees. This can be challenging, particularly in the highly competitive market for technical personnel. Retaining key executives for the long term can also be difficult due to other opportunities available to them. Disputes that may arise out of earn-outs, escrows, and other arrangements related to an acquisition of a company in which a key employee was a principal may negatively affect the morale of the employee and make retaining the employee more difficult. It could be difficult, time consuming, and expensive to replace any key management members or other critical personnel that do not accept employment with the Company following any transaction or whose employment is subsequently terminated. In addition to retaining key employees, we must integrate them into our Company, or potentially re-direct their efforts, both of which can be difficult, time consuming, and costly. Changes in management or other critical personnel may be disruptive to our business and might also result in our loss of some unique skills and the departure of existing employees, customers, partners, vendors, and others.

We rely on third-party manufacturers to manufacture and produce our hardware products and to package certain of our software products, which subjects us to risks of product delivery delays and other supply risks.

We rely on a limited number of third parties to manufacture our hardware-based products and to replicate and package our boxed software products. Many of our products are manufactured and supplied by a single, although not the same, source. This reliance on third parties involves a number of risks that could have a negative impact on our business and financial results. Our reliance on these third-party manufacturers reduces our control over the manufacturing process and exposes us to risks, including reduced control over quality assurance, product costs, product supply, timing, and transportation risk. From time to time, we may be required to add new manufacturing partners to accommodate growth in orders or the addition of new products. It is time consuming and costly to qualify and implement new manufacturing partner relationships, and such additions increase the complexity of our supply chain management. If we lose, terminate, or fail to effectively manage our manufacturing partner relationships, or if any of our manufacturing partners experience production interruptions or shut-downs, including those caused by a natural disaster, epidemic, pandemic (such as the COVID-19 pandemic), capacity shortage, or quality-control problem, it would negatively affect sales of our product lines manufactured by that manufacturing partner and adversely affect our business and results of operations.

We rely on certain technology that we license from third parties, including software that is integrated with internally developed software and used with our products. Any loss of those licenses or any quality issues with third-party technology integrated with our products could have an adverse impact on our reputation and business.

We rely on certain technology that we license from third parties, including third-party commercial software and open source software, which is used with certain of our solutions. This third-party software may currently or could, in the future, infringe the intellectual property rights of third parties or the licensors may not have sufficient rights to the software they license us in all jurisdictions in which we may sell our products. The licensors of the third-party software we use may discontinue their offerings or change the terms under which their software is licensed. If we are unable to continue to license any of this software or change available offerings to products we find acceptable, or if there are quality, security, or other substantive issues with any of this software, we may face
delays in releases of our solutions or we may be required to find alternative vendors or remove functionality from our solutions. In addition, our inability to obtain certain licenses or other rights might require us to engage in litigation regarding these matters, which could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

**We rely on third parties to support our information technology infrastructure and any service interruptions or other failures of our third-party providers or of our information technology infrastructure could result in disruption to our operations or adversely impact our business.**

We engage third parties to provide variety of information technology products and services to support our information technology infrastructure. Any failure on the part of our third-party providers or of our information technology infrastructure to operate effectively, stemming from maintenance problems, upgrading or transitioning to new platforms, a breach in security or other unanticipated problems could result in interruptions to or delays in our operations or our products or services. In addition, we make significant investments in new information technology infrastructure, but the implementation of such investments could exceed estimated budgets and we may experience challenges that prevent new strategies or technologies from being realized according to anticipated schedules. If we are unable to effectively maintain our current information technology and processes or encounter delays, or fail to exploit new technologies, then the execution of our business plans may be disrupted. Our employees and other personnel require effective tools and techniques to perform functions integral to our business. Any failure to successfully provide such tools and systems, or ensure that our personnel have properly adopted them, could materially and adversely impact our ability to achieve positive business outcomes.

Some of our systems or data that we may maintain or process may not be adequately backed up, and our disaster recovery planning cannot account for all eventualities. The occurrence of a natural disaster, intentional sabotage, or other unanticipated problems could result in significant interruptions to our operations or the permanent loss of valuable data. In addition, the implementation of changes and upgrades to our information technology infrastructure and any errors, vulnerabilities, damage, or failure of our information technology infrastructure, could result in interruptions to our operations or products or services and non-compliance with certain laws or regulations, which may lead us to face fines or penalties, give rise to indemnification or other contractual claims against us by our customers or other third parties, and otherwise adversely impact our business.

**Our use of open source software could negatively affect our ability to sell our solutions and subject us to possible litigation.**

We use open source software in our solutions and our development and operating environments and expect to continue to use open source software in the future. Open source software is typically provided without assurances of any kind. Because the source code of open source software components included in our solutions is publicly available, in instances where our usage is publicly disclosed or known, it may be easier to identify exploits or vulnerabilities in such open source software components, making our solutions using such open source software components more vulnerable to third parties seeking to compromise, undermine, or circumvent our solutions. If open source software programmers do not continue to develop and enhance open source technologies, our development expenses could increase and our schedules could be delayed. In addition, we may face claims from others seeking to enforce the terms of open source licenses, including by demanding release of derivative works or our proprietary source code that was developed using or otherwise used in connection with such open source software. The terms of many open source licenses have not been interpreted by U.S. or foreign courts, and these licenses could be construed in a way that could impose other unanticipated costs, conditions, or restrictions on our ability to commercialize our products. These claims could also result in litigation, require us to purchase a costly license, require us to devote additional research and development resources to change our solutions, or stop or delay shipment of such solutions, any of which could have a negative effect on our business, financial condition, results of operations, and cash flows. In addition, if the license terms for the open source
software that we utilize change, we may be forced to re-engineer our solutions or incur additional costs. Although we have policies designed to manage the use, incorporation, and updating of open source software into our products, we cannot be certain that we have in all cases incorporated open source software in our products in a manner that is consistent with the applicable open source license terms and inclusive of all available updates or security patches, and as a result we may be subject to claims for breach of contract or infringement by the applicable licensor, claims for breach of contract or indemnity by our partners or customers, or we or our partners or customers could be required to release our proprietary source code, pay damages, royalties, or license fees or other amounts, seek licenses, or experience quality control or security risks, any of which could require us to re-engineer our solutions, discontinue sales in the event re-engineering cannot be accomplished on a timely basis, or take other remedial action that may divert resources away from our development efforts, any of which could adversely affect our business.

*If the protection of our proprietary technology is inadequate, we may not be able to adequately protect our innovations and brand.*

Our success is dependent on our ability to create proprietary technology and to protect and enforce our intellectual property rights in that technology, as well as our ability to defend against adverse claims of third parties with respect to our technology and intellectual property rights. To protect our proprietary technology, we rely primarily on a combination of patent, copyright, trademark, and trade secret laws, as well as contractual provisions and operational and procedural confidentiality protections. The agreements that we enter into with our employees, contractors, partners, vendors, and end-users may not prevent unauthorized use or disclosure of our proprietary technology or infringement of our intellectual property rights and may not provide an adequate remedy in the event of unauthorized use or disclosure of our proprietary technology or infringement of our intellectual property rights, which may substantially harm our business. Furthermore, we cannot be assured that such agreements will be fully enforceable, or that they will not be breached by the counterparties, or that we will be able to detect, deter, or adequately address any such breach or threatened breach. As a provider of cybersecurity solutions, we may be an attractive target for computer hackers or other bad actors and may have a greater risk of unauthorized access to, and misappropriation of, our systems, technology, and proprietary information. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or obtain and use information that we regard as proprietary. Policing unauthorized use of our products and infringement of our rights is difficult. In addition, the laws of some foreign countries, including countries where we sell solutions or have operations, do not protect proprietary rights to as great an extent as do the laws of the United States. Our means of protecting our proprietary rights may not be adequate and third parties, including current and future competitors, may independently develop similar or superior technology, duplicate or reverse engineer aspects of our products, or design around our patented technology or otherwise infringe or circumvent our intellectual property rights.

As of June 27, 2020, we had approximately 1,340 issued U.S. patents, in addition to approximately 680 issued foreign patents and approximately 615 pending U.S. and foreign patent applications. There can be no assurance that any of our pending patent applications will issue or that the patent examination process will not result in our narrowing the claims applied for in our patent applications or that any current or future issued patents will not be later challenged, limited, or invalidated. Furthermore, there can be no assurance that we will be able to detect any infringement of our existing or future intellectual property rights or, if infringement is detected, that we will be successful in asserting claims or counterclaims, that our intellectual property rights will be enforceable, that any damages awarded to us will be sufficient to adequately compensate us for the infringement, that we will be able to obtain injunctive relief to prevent ongoing infringement, or that the costs of seeking enforcement will not outweigh any benefits.

There can be no assurance or guarantee that any products, services, or technologies that we are presently developing, or will develop in the future, will result in intellectual property that is subject to legal protection under the laws of the United States or a foreign jurisdiction or that produces a competitive advantage for us.
We may be sued by third parties for alleged infringement, misappropriation, or other violation of their proprietary rights, and it may be necessary for us to sue third parties to enforce and protect our proprietary rights, resulting in potential lengthy and expensive litigation.

From time to time, third parties may claim that we have infringed, misappropriated, or otherwise violated their intellectual property rights, including claims regarding patents, copyrights, trademarks, and trade secrets. Because of constant technological change in the segments in which we compete, the extensive patent coverage of existing technologies, and the rapid rate of issuance of new patents, we expect the trend of third-party claims to continue and that we will be required to defend against actual or threatened litigation of this type. The litigation process is subject to inherent uncertainties, so we may not prevail in litigation matters regardless of the merits of our position. Our participation in any litigation could cause us to incur substantial costs and could distract our management from the day-to-day operations of our business. In addition to the expense and distraction associated with litigation, adverse determinations could cause us to lose our proprietary rights, prevent us from manufacturing or selling our products, require us to obtain licenses to patents or other intellectual property rights that our products are alleged to infringe, misappropriate, or otherwise violate (which licenses may not be available on commercially reasonable terms or at all), or re-design or re-engineer our products to address actual or claimed infringement, misappropriation, or other violation and subject us to significant liabilities.

If we acquire technology to include in our products from third parties, our exposure to actions alleging infringement, misappropriation, or other violation may increase because we must rely upon these third parties to verify the origin and ownership of such technology. Our agreements with such third parties may not provide adequate protections or remedies, and we may not be able to compel such third parties to provide any available remedies in the case of such actions. Similarly, we face exposure to actions alleging infringement, misappropriation, or other violation if we hire or engage software engineers who were previously employed by competitors or other third parties and those employees or other personnel inadvertently or deliberately incorporate proprietary technology of third parties into our products despite efforts to prevent such infringement, misappropriation, or other violation.

From time to time, the U.S. Supreme Court, other U.S. federal courts and the U.S. Patent and Trademark Appeals Board, and their foreign counterparts, have made and may continue to make changes to the interpretation of patent, copyright, trademark, or other intellectual property laws in their respective jurisdictions. We cannot predict future changes to the interpretation of such existing laws or whether U.S. or foreign legislative bodies will amend such laws in the future. Any such changes may lead to uncertainties or increased costs and risks surrounding the prosecution, validity, enforcement, and defense of our issued patents and patent applications and other intellectual property, the outcome of third-party claims of infringement, misappropriation, or other violation of intellectual property brought against us and the actual or enhanced damages (including treble damages) that may be awarded in connection with any such current or future claims, and could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

Our business is subject to the risks of product defects, warranty claims, product returns, and product liability.

Our solutions are highly complex and may contain design defects or errors that are not detected before their commercial release, particularly when first introduced or as new versions or upgrades are released. Despite testing by us and by current and potential customers, design defects or errors may not be found until after commencement of commercial shipments, resulting in customer dissatisfaction and loss of or delay in market acceptance and sales opportunities. These errors and quality problems could also cause us to incur significant repair or replacement costs, divert the attention of our engineering personnel from our product development efforts, and cause significant customer relations problems. We may also incur significant costs in connection with a product recall and any related indemnification obligations. We have experienced errors or quality problems in the past in connection with solutions and enhancements and expect that errors or quality problems will be found from time to time in the future. Any of these errors or other quality problems could adversely affect our results of operations.
Historically, the amount of warranty claims we have received has not been significant, but there is no guarantee that claims will not be significant in the future. Any errors, defects, or other problems with our products could negatively impact our customers and result in financial or other losses. While we typically seek by contract to limit our exposure to damages, liability limitation provisions in our standard terms and conditions of sale, and those of our channel partners, may not be enforceable under some circumstances or may not fully or effectively protect us from customer claims and related liabilities and costs, including indemnification obligations under our agreements with channel partners or customers. The sale and support of our solutions also entail the risk of product liability claims. In addition, even claims that ultimately are unsuccessful could require us to incur costs in connection with litigation and divert management’s time and other resources, and could seriously harm the reputation of our business and solutions.

**Our third-party strategic alliances expose us to a range of business risks and uncertainties that are outside of our control and that could have a material adverse impact on our business and financial results.**

We have entered, and intend to continue to enter, into strategic alliances with third parties to support our future growth plans. These relationships involve technology licensing, product integration, and co-marketing and co-promotion activities. For example, we have arrangements with operating system vendors that provide us with sufficient technological access to new and updated versions of their operating systems to enable us to develop and deploy interoperable products that are deeply integrated with their operating systems on our customers’ networks and devices. We also partner with certain Internet search providers to promote their offerings to our customers. We invest significant time, money, and resources to establish and maintain these strategic relationships, but we have no assurance that any particular relationship will continue for any specific period of time.

Furthermore, certain of these strategic partners currently offer, and may in the future offer, products, and services that compete with our own solutions in certain markets, and in the future these partners may impose limitations on, or terminate, our partnerships in order to improve their own competitive position. Generally, our agreements with these partners are terminable without cause with no or minimal notice or penalties. Any adverse change in our relationships with a significant strategic partner could limit or delay our ability to offer certain new or competitive solutions, increase our development costs, and reduce our revenue, any of which could have an adverse impact on our competitive position and our financial performance. In addition, we could be required to incur significant expenses to develop a new strategic partnership or to develop and implement an alternative plan to pursue the opportunity that we targeted with the former partner, which could adversely affect our business, financial condition, results of operations, and cash flows.

**If we fail to successfully promote or protect our brand, our business, and competitive position may be harmed.**

Due to the intensely competitive nature of our markets, we believe that building and maintaining our brand and reputation is critical to our success, and that the importance of positive brand recognition will increase as competition in our market further intensifies. Over our 30-year history, we have invested and expect to continue to invest substantial resources to promote and maintain our brand as a trusted cybersecurity provider, but there is no guarantee that our brand development strategies will enhance the recognition of our brand or lead to increased sales of our solutions.

In recent years, there has been a marked increase in the use of social media platforms, including blogs, chat platforms, social media websites, and other forms of internet-based communications that allow individuals access to a broad audience of consumers and other persons. The rising popularity of social media and other consumer-oriented technologies has increased the speed and accessibility of information dissemination and given users the ability to more effectively organize collective actions such as boycotts. Negative publicity, whether or not justified, can spread rapidly through social media. The dissemination of information via social media could harm
our brand or our business, regardless of the information’s accuracy. To the extent that we are unable to respond timely and appropriately to negative publicity, our reputation and brand could be harmed. This could include negative publicity related to our products or services or negative publicity related to actions by our executives, team members or other individuals or entities that may be perceived as being associated with us. Moreover, even if we are able to respond in a timely and appropriate manner, we cannot predict how negative publicity may affect our reputation and business. In addition, we and our employees use social media and other internet-based communications methods to communicate with our end-users, customers, partners, and the public in general. There is risk that the social media communications of us or our employees could be received negatively. Failure to use social media or other internet-based communication methods effectively could lead to a decline in our reputation. Further, laws and regulations, including associated enforcement priorities, rapidly evolve to govern social media platforms and other internet-based communications, any failure by us or third parties acting at our direction to abide by applicable laws and regulations in the use of social media or internet-based communications could adversely impact our reputation, financial performance or subject us to fines or other penalties. Other risks associated with the use of social media and internet-based communication include improper disclosure of proprietary information, negative comments about our brand, products, or services, exposure of personally identifiable information, fraud, hoaxes, or malicious dissemination of false information.

**If cybersecurity industry analysts publish unfavorable or inaccurate research reports about our business, our financial performance could be harmed.**

An increasing number of independent industry analysts and researchers regularly evaluate, compare, and publish reviews regarding the performance, efficiency, and functionality of cybersecurity products and services, including our own solutions. The market’s perception of our solutions may be significantly influenced by these reviews. We do not have any control over the content of these independent industry analysts and research reports, or the methodology they use to evaluate our solutions, which may be flawed or incomplete. Demand for our solutions could be harmed if these industry analysts publish negative reviews of our solutions or do not view us as a market leader. If we are unable to maintain a strong reputation, sales to new and existing customers and renewals could be adversely affected, and our financial performance could be harmed.

**Our failure to adequately maintain and protect personal information of our customers or our employees in compliance with evolving legal requirements could have a material adverse effect on our business.**

We collect, use, store, disclose, or transfer (collectively, “process”) personal information, including from employees and customers, in connection with the operation of our business. A wide variety of local and international laws and regulations apply to the processing of personal information. Data protection and privacy laws and regulations are evolving and being tested in courts and may result in increasing regulatory and public scrutiny and escalating levels of enforcement and sanctions. For example, in 2016, the E.U. adopted the General Data Protection Regulation (“GDPR”), which took effect on May 25, 2018. The GDPR imposes requirements that may limit how we are permitted to process data on behalf of ourselves and our clients, and we may be required to incur significant additional costs to comply with these requirements. Applicable laws, regulations and court decisions in the E.U. relating to privacy and data protection could also impact our ability to transfer personal data internationally. The GDPR specifies substantial maximum fines for failure to comply. Continued compliance with the GDPR and national laws in the E.U. may require significant changes to our products and practices to ensure compliance with applicable law.

A variety of data protection legislation also apply in the United States at both the federal and state level, including new laws that may impact our operations. For example, in June 2018, the State of California enacted the California Consumer Privacy Act of 2018 (“CCPA”), which went into effect on January 1, 2020, with enforcement by the state attorney general beginning July 1, 2020. The CCPA defines “personal information” in a broad manner and generally requires companies that process personal information of California residents to make new disclosures about their data collection, use, and sharing practices, allows consumers to opt-out of certain data sharing with third parties or sale of personal information, and provides a new cause of action for data breaches. Moreover, a new
privacy law, the California Privacy Rights Act ("CPRA") was recently certified by the California Secretary of State to appear on the ballot for the upcoming election on November 3, 2020. If this initiative is approved by California voters, the CPRA would significantly modify the CCPA, potentially resulting in further uncertainty and requiring us to incur additional expenditures to comply. Additionally, the Federal Trade Commission, and many state attorneys general are interpreting federal and state consumer protection laws to impose standards for the online collection, use, dissemination, and security of data. The burdens imposed by the CCPA and other similar laws that have been or may be enacted at the federal and state level may require us to modify our data processing practices and policies and to incur substantial expenditures in order to comply.

Global privacy and data protection legislation, enforcement, and policy activity are rapidly expanding and evolving, and may be inconsistent from jurisdiction to jurisdiction. On July 16 2020, the Court of Justice of the European Union, Europe’s highest court, held in the Schrems II case that the E.U.-U.S. Privacy Shield, a mechanism for the transfer of personal data from the E.U. to the U.S., was invalid, and imposed additional obligations in connection with the use of standard contractual clauses approved by the European Commission. The impact of this decision on the ability to lawfully transfer personal data from the E.U. to the U.S. is being assessed and guidance from European regulators and advisory bodies is awaited. It is possible that the decision will restrict the ability to transfer personal data from the E.U. to the U.S. and we may, in addition to other impacts, experience additional costs associated with increased compliance burdens, and we and our customers face the potential for regulators in the European Economic Area ("EEA") to apply different standards to the transfer of personal data from the EEA to the U.S., and to block, or require ad hoc verification of measures taken with respect to, certain data flows from the EEA to the U.S. We may experience reluctance or refusal by current or prospective European customers to use our products, and we may find it necessary or desirable to make further changes to our handling of personal data of EEA residents. The regulatory environment applicable to the handling of EEA residents’ personal data, and our actions taken in response, may cause us to assume additional liabilities or incur additional costs and could result in our business, operating results and financial condition being harmed. We and our customers may face a risk of enforcement actions by data protection authorities in the EEA relating to personal data transfers to us and by us from the EEA. Any such enforcement actions could result in substantial costs and diversion of resources, distract management and technical personnel and negatively affect our business, operating results and financial condition. Additionally, we may be or become subject to data localization laws mandating that data collected in a foreign country be processed only within that country. If any country in which we have customers were to adopt a data localization law, we could be required to expand our data storage facilities there or build new ones in order to comply. The expenditure this would require, as well as costs of compliance generally, could harm our financial condition.

Further, in June 2016, the U.K. voted to leave the E.U., which resulted in the U.K. exiting the E.U. on January 31, 2020, subject to a transition period ending December 31, 2020. Brexit could lead to further legislative and regulatory changes. The U.K. has implemented a Data Protection Act that substantially implements the GDPR, but it remains to be seen whether the U.K.’s withdrawal from the E.U. pursuant to Brexit will substantially impact the manner in which U.K. data protection laws or regulations will develop in the medium to longer term and how data transfers to and from the U.K. will be regulated.

Our actual or alleged failure to comply with any applicable laws and regulations or privacy-related contractual obligations, or to protect such data that we process, could result in litigation, regulatory investigations, and enforcement actions against us, including fines, orders, public censure, claims for damages by employees, customers, and other affected individuals, public statements against us by consumer advocacy groups, damage to our reputation and competitive position, and loss of goodwill (both in relation to existing customers and prospective customers), any of which could have a material adverse effect on our business, financial condition, results of operations, and cash flows. Evolving and changing definitions of personal information, personal data, and similar concepts within the E.U., the United States, and elsewhere, especially relating to classification of IP addresses, device identifiers, location data, household data, and other information we may collect, may limit or inhibit our ability to operate or expand our business, including limiting strategic partnerships that may involve the sharing of data. Additionally, if third parties that we work with, such as
vendors or developers, violate applicable laws or our policies, such violations may also place personal information at risk and have an adverse effect on our business. Even the perception of privacy concerns, whether or not valid, may harm our reputation, subject us to regulatory scrutiny and investigations, and inhibit adoption of our products by existing and potential customers.

**Our business operations and the use of our technology are subject to evolving legal requirements regarding privacy throughout the world.**

We currently operate our business in jurisdictions where we are subject to evolving data protection or privacy laws and regulations. Certain of our products and services involve the transmission data between jurisdictions. While we are continuously evaluating our products’ and services’ compliance with current regulatory and security requirements in the jurisdictions in which we offer these products and services, there can be no assurance that such requirements will not change or that we will not otherwise be subject to legal or regulatory actions. In addition, our products, when configured by our customers, may intercept and examine data in a manner that may subject their use to privacy and data protection laws and regulations in those jurisdictions in which our customers operate.

Any failure or perceived failure by us or by our products or services to comply with these laws and regulations may subject us to legal or regulatory actions, damage our reputation, or adversely affect our ability to sell our products or services. Moreover, if these laws and regulations change, or are interpreted and applied in a manner that is inconsistent with our data practices or the operation of our products and services, we may need to expend resources in order to change our business operations, data practices, or the manner in which our products or services operate. This could adversely affect our business, financial condition, results of operations, and cash flows.

**We are subject to governmental export and import controls that could subject us to liability or impair our ability to compete in international markets.**

Our solutions are subject to U.S. export controls, specifically the Export Administration Regulations and economic sanctions enforced by the Office of Foreign Assets Control. We incorporate standard encryption algorithms into certain of our solutions, which, along with the underlying technology, may be exported outside of the United States only with the required export authorizations, including by license, license exception, or other appropriate government authorizations, which may require the filing of a classification request or report. Furthermore, U.S. export control laws and economic sanctions prohibit the shipment of certain products and services to countries, governments, and persons targeted by U.S. sanctions, including embargoes. Even though we take precautions to ensure that we and our channel partners comply with all relevant regulations, any failure by us or our channel partners to comply with U.S. export requirements, U.S. customs regulations, U.S. economic sanctions, or other laws could have negative consequences, including reputational harm, government investigations, and substantial civil and criminal penalties (e.g., fines, incarceration for responsible employees and managers, and the possible loss of export or import privileges).

In addition, changes in our solutions or changes in export and import regulations may create delays in the introduction of our solutions into international markets, including as a consequence of new licensing requirements, prevent certain personnel from developing or maintaining our products, prevent our end-customers with international operations from deploying our products globally or, in some cases, prevent or delay the export or import of our solutions to certain countries, governments, or persons altogether. Any change in export or import regulations, economic sanctions or related legislation, shift in the enforcement or scope of existing regulations, or change in the countries, governments, persons, or technologies targeted by such regulations, could result in decreased use of our solutions by, or in our decreased ability to develop, export to, or sell our solutions to, existing or potential end-customers with international operations. Any decreased use of our solutions or limitation on our ability to develop, export to, or sell our solutions in international markets would likely adversely affect our business, financial condition, results of operations, and cash flows.
Failure to comply with the U.S. Foreign Corrupt Practices Act, other applicable anti-corruption and anti-bribery laws, and applicable anti-money-laundering laws could subject us to penalties and other adverse consequences.

We currently conduct a substantial portion of our operations and sell our products and services in numerous countries outside of the United States, including in the APAC, EMEA, and LAR regions. Our global operations are subject to the FCPA, the U.K. Bribery Act 2010, and other anti-corruption, anti-bribery, anti-money laundering, and similar laws in the United States and other countries in which we conduct activities. The FCPA prohibits covered parties from offering, promising, authorizing, or giving anything of value, directly or indirectly, to a “foreign government official” with the intent of improperly influencing the official’s act or decision, inducing the official to act or refrain from acting in violation of lawful duty or obtaining or retaining an improper business advantage. In addition, other applicable anti-corruption laws prohibit bribery of domestic government officials as well as commercial bribery, which involves the giving or receiving improper payments to or from non-government parties.

While we have implemented policies, internal controls, and other measures reasonably designed to promote compliance with applicable anti-corruption, anti-bribery, and anti-money-laundering laws and regulations, our employees, agents, and strategic partners may engage in improper conduct for which we might be held responsible. Any violations of these anti-corruption, anti-bribery laws and anti-money laundering laws and regulations, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction, and lead to significant costs and expenses, including legal fees. If we, or our employees, agents, or strategic partners acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, and other consequences that may have a material adverse effect on our business, financial condition, results of operations, and cash flows.

In addition, our brand and reputation, our sales activities, or the value of our business could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery, or anti-money-laundering laws and regulations.

We may be unable to raise additional capital on acceptable terms, or at all.

We believe that our available cash and cash equivalents, together with funds from this offering and generated from our operating activities and unused availability under our Revolving Credit Facility, will be sufficient to meet our near term working and other capital requirements. However, if cash is required for unanticipated needs, including in connection with a proposed acquisition of a company or technology, we may need additional capital. The development and marketing of new solutions and our investment in sales and marketing efforts require a significant commitment of resources. If the markets for our solutions develop at a slower pace than anticipated, we could be required to raise additional capital. We cannot guarantee that, should it
be required, sufficient debt or equity capital will be available to us under acceptable terms, if at all. If we were unable to raise additional capital when required, our business, financial condition, results of operations, and cash flows could be seriously harmed.

**We have experienced net losses in recent periods and may not maintain profitability in the future.**

We experienced net loss of $236 million for fiscal 2019 and net income of $31 million for the 26-week period ended June 27, 2020. While we have experienced revenue growth over these same periods, we may not be able to sustain or increase our growth or maintain profitability in the future or on a consistent basis. In recent years, we have changed our portfolio of products and invested in research and development to develop new products and enhance current solutions.

We also expect to continue to invest for future growth. We expect that to maintain profitability we will be required to increase revenues, manage our cost structure, and avoid significant liabilities. Revenue growth may slow, revenue may decline, or we may incur significant losses in the future for a number of possible reasons, increasing competition, a decrease in the growth of the markets in which we operate, or if we fail for any reason to continue to capitalize on growth opportunities. Additionally, we may encounter unforeseen operating expenses, difficulties, complications, delays, and other unknown factors that may result in losses in future periods. If these losses exceed our expectations or our revenue growth expectations are not met in future periods, our financial performance may be harmed.

**Foreign currency exchange rate fluctuations may adversely affect our financial performance.**

A significant portion of our transactions outside of the United States are denominated in foreign currencies. We remeasure revenues and costs from these transactions into U.S. dollars for reporting purposes. As a result, our future results of operations will continue to be subject to fluctuations in foreign currency rates. For example, Brexit resulted in an adverse impact to currency exchange rates, notably the British Pound Sterling which experienced a sharp decline in value compared to the U.S. dollar and other currencies. We may be positively or negatively affected by fluctuations in foreign currency rates in the future, especially if international sales continue to grow as a percentage of our total sales and foreign currency rates continue to experience increased volatility due to the COVID-19 pandemic. Additionally, fluctuations in currency exchange rates will impact our deferred revenue balance, which is a key financial metric at each period end. We may employ hedging techniques to mitigate this risk but hedging may be insufficient or the hedging may create losses. Furthermore, to the extent our customers or partners require us to enter into long-term contracts denominated in foreign currencies, our exposure to these risks would increase. If we are not able to successfully hedge against the risks associated with currency fluctuations, our financial condition, and results of operations could be adversely affected.

Further, we have a substantial amount of euro-denominated indebtedness. Fluctuations in the exchange rate between U.S. dollars and euros may have a material adverse effect on our ability to repay such indebtedness.

**Changes in tax laws or in their implementation may adversely affect our business and financial condition.**

Changes in tax law may adversely affect our business or financial condition. On December 22, 2017, the U.S. government enacted legislation commonly referred to as the Tax Cuts and Jobs Act, or the TCJA, which significantly reformed the Internal Revenue Code of 1986, as amended (the “Code”). The TCJA, among other things, contained significant changes to corporate taxation, including a reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, the limitation of the tax deduction for net interest expense to 30% of adjusted earnings (except for certain small businesses), the limitation of the deduction for net operating losses, or NOLs, arising in taxable years beginning after December 31, 2017 to 80% of current year taxable income and elimination of NOL carrybacks for losses arising in taxable years ending after December 31, 2017 (though any such NOLs may be carried forward indefinitely), the imposition of a one-time taxation of offshore earnings at
reduced rates regardless of whether they are repatriated, the elimination of U.S. tax on foreign earnings (subject to certain important exceptions), the allowance of immediate deductions for certain new investments instead of deductions for depreciation expense over time, and the modification or repeal of many business deductions and credits.

As part of Congress’s response to the COVID-19 pandemic, the Families First Coronavirus Response Act, commonly referred to as the FFCR Act, was enacted on March 18, 2020, and the Coronavirus Aid, Relief, and Economic Security Act, commonly referred to as the CARES Act, was enacted on March 27, 2020. Both contain numerous tax provisions. In particular, the CARES Act retroactively and temporarily (for taxable years beginning before January 1, 2021) suspends application of the 80%-of-taxable-income limitation on the use of NOLs, which was enacted as part of the TCJA. It also provides that NOLs arising in any taxable year beginning after December 31, 2017 and before January 1, 2021 are generally eligible to be carried back up to five years. The CARES Act also temporarily (for taxable years beginning in 2019 or 2020) relaxes the limitation of the tax deductibility for net interest expense by increasing the limitation from 30% to 50% of adjusted taxable income.

Regulatory guidance under the TCJA, the FFCR Act and the CARES Act is and continues to be forthcoming, and such guidance could ultimately increase or lessen impact of these laws on our business and financial condition. It is also likely that Congress will enact additional legislation in connection with the COVID-19 pandemic, some of which could have an impact on our Company. In addition, it is uncertain if and to what extent various states will conform to the TCJA, the FFCR Act or the CARES Act.

**Forecasting our estimated annual effective tax rate is complex and subject to uncertainty, and there may be material differences between our forecasted and actual tax rates.**

Forecasts of our income tax position and effective tax rate are complex and subject to uncertainty because our income tax position for each year combines the effects of a mix of profits and losses earned by us and our subsidiaries in various tax jurisdictions with a broad range of income tax rates, as well as changes in the valuation of deferred tax assets and liabilities, the impact of various accounting rules and changes to these rules and tax laws, such as the U.S. federal income tax laws, including impacts of the TCJA, FFCR Act and CARES Act, arising from future interpretations of such legislation, the results of examinations by various tax authorities and the impact of any acquisition, business combination, or other reorganization or financing transaction. To forecast our global tax rate, we estimate our pre-tax profits and losses by jurisdiction and forecast our tax expense by jurisdiction. If our mix of profits and losses, our ability to use tax credits, or effective tax rates by jurisdiction is different than those estimated, our actual tax rate could be different than forecasted, which could have a material impact on our financial condition and results of operations.

As a multinational corporation, we conduct our business in many countries and are subject to taxation in many jurisdictions. The taxation of our business is subject to the application of multiple and conflicting tax laws and regulations as well as multinational tax conventions. Our effective tax rate is highly dependent upon the geographic distribution of our worldwide earnings or losses, the tax regulations in each geographic region, the availability of tax credits and carryforwards, and the effectiveness of our tax planning strategies. The application of tax laws and regulations is subject to legal and factual interpretation, judgment, and uncertainty. Tax laws themselves are subject to change as a result of changes in fiscal policy, changes in legislation, and the evolution of regulations and court rulings. Consequently, taxing authorities may impose tax assessments or judgments against us that could materially impact our tax liability and/or our effective income tax rate.

In addition, we are subject to examination of our income tax returns by the Internal Revenue Service (“IRS”) and other tax authorities. If tax authorities challenge the relative mix of our U.S. and international income, our future effective income tax rates could be adversely affected, including for future periods and retroactively. While we regularly assess the likelihood of adverse outcomes from such examinations and the adequacy of our provision for income taxes, there can be no assurance that such provision is sufficient and that a determination by a tax authority will not have an adverse effect on our business, financial condition, results of operations, and cash flows.
Our global operations may expose us to increased tax risks.

We are generally required to account for taxes in each jurisdiction in which we operate. This process may require us to make assumptions, interpretations, and judgments with respect to the meaning and application of promulgated tax laws and related administrative and judicial interpretations. The positions that we take and our interpretations of the tax laws may differ from the positions and interpretations of the tax authorities in the jurisdictions in which we operate. An adverse outcome in any examination could have a significant negative impact on our cash position and net income. Although we have established reserves for examination contingencies in accordance with published guidance, there can be no assurance that the reserves will be sufficient to cover our ultimate liabilities.

Our provision for income taxes is subject to volatility and can be adversely affected by a variety of factors, including but not limited to: unanticipated decreases in the amount of revenue or earnings in countries with low statutory tax rates, changes in tax laws and the related regulations and interpretations (including various proposals currently under consideration), changes in accounting principles (including accounting for uncertain tax positions), and changes in the valuation of our deferred tax assets. Significant judgment is required to determine the recognition and measurement attributes prescribed in certain accounting guidance. This guidance applies to all income tax positions, including the potential recovery of previously paid taxes, which if settled unfavorably could adversely impact our provision for income taxes.

Our ability to use certain net operating loss carryforwards and certain other tax attributes may be limited.

Under Sections 382 and 383 of the Code, if a corporation undergoes an “ownership change,” the corporation’s ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income and taxes may be limited. In general, an “ownership change” occurs if there is a cumulative change in ownership of the relevant corporation by “5% shareholders” (as defined under U.S. income tax laws) that exceeds 50 percentage points over a rolling three-year period. Similar rules apply under state tax laws. If our corporate subsidiaries experience one or more ownership changes in connection with this offering and other transactions in our stock, then we may be limited in our ability to use our corporate subsidiaries’ net operating loss carryforwards and other tax assets to reduce taxes owed on the net taxable income that such subsidiaries earn. Any such limitations on the ability to use net operating loss carryforwards and other tax assets could adversely impact our business, financial condition, results of operations, and cash flows.

We may become involved in litigation, investigations, and regulatory inquiries and proceedings that could negatively affect us and our reputation.

From time to time, we are involved in various legal, administrative, and regulatory proceedings, claims, demands, and investigations relating to our business, which may include claims with respect to commercial, product liability, intellectual property, data privacy, consumer protection, breach of contract, employment, class action, whistleblower, and other matters. In the ordinary course of business, we also receive inquiries from and have discussions with government entities regarding the compliance of our contracting and sales practices with laws and regulations. Such matters can be costly and time consuming and divert the attention of our management and key personnel from our business operations. We have been and are currently, and expect to continue to be, subject to third-party intellectual property infringement claims by entities that do not have operating businesses of their own and therefore limit our ability to seek counterclaims for damages and injunctive relief. Plaintiffs may seek, and we may become subject to, preliminary or provisional rulings in the course of any such litigation, including potential preliminary injunctions requiring us to cease some or all of our operations. Similarly, if any litigation to which we are a party is resolved adversely, we may be subject to an unfavorable judgment that may not be reversed upon appeal. Any claims or litigation could cause us to incur significant expenses and, if successfully asserted against us, could require that we pay substantial damages (including, for example, treble damages if we are found to have willfully infringed patents and increased statutory damages if we are found to have willfully infringed copyrights), pay ongoing royalty payments, delay or prevent us from offering our
products or services, or require that we comply with other unfavorable terms. In addition, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all. We may also decide to settle such matters on terms that are unfavorable to us.

If we fail to comply with environmental requirements, our business, financial condition, results of operations, cash flows, and reputation could be adversely affected.

Our operations and the sale of our solutions are subject to various federal, state, local, and foreign environmental and safety regulations, including laws adopted by the E.U., such as the Waste Electrical and Electronic Equipment Directive (“WEEE Directive”), and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Directive (“E.U. RoHS Directive”), of certain metals from global hot spots. The WEEE Directive requires electronic goods producers to be responsible for marking, collection, recycling, and treatment of such products. Changes in the WEEE Directive of the interpretation thereof may cause us to incur additional costs or meet additional regulatory requirements, which could be material. Similar laws and regulations have been passed or are pending in China, South Korea, Norway, and Japan and may be enacted in other regions, including in the United States, and we are, or may in the future be, subject to these laws and regulations.

The E.U. RoHS Directive and similar laws of other jurisdictions limit the content of certain hazardous materials such as lead, mercury, and cadmium in the manufacture of electrical equipment, including our products. Currently, our products comply with the E.U. RoHS Directive requirements. However, if there are changes to this or other laws, or to their interpretation, or if new similar laws are passed in other jurisdictions, we may be required to reengineer our products or to use different components to comply with these regulations. This reengineering or component substitution could result in substantial costs to us or disrupt our operations or logistics.

We are also subject to environmental laws and regulations governing the management of hazardous materials, which we use in small quantities in our engineering labs. Our failure to comply with past, present, and future environmental and safety laws could result in increased costs, reduced sales of our products, substantial product inventory write-offs, reputational damage, penalties, third-party property damage, remediation costs, and other sanctions, any of which could harm our business, financial condition, results of operations, and cash flows. To date, our expenditures for environmental compliance have not had a material impact on our results of operations or cash flows, and although we cannot predict the future impact of such laws or regulations, they will likely result in additional costs and may increase penalties associated with violations or require us to change the content of our products or how they are manufactured, which could have a material adverse effect on our business, financial condition, results of operations, and cash flows. We also expect that our business will be affected by new environmental laws and regulations on an ongoing basis, which may be more stringent, imposing greater compliance costs and increasing risks and penalties associated with violations which could harm our business.

Our business, financial condition, results of operations, or cash flows could be significantly hindered by the occurrence of a natural disaster, terrorist attack, pandemic, or other catastrophic event.

Our business operations are susceptible to outages due to fire, floods, unusual weather conditions, power loss, telecommunications failures, terrorist attacks, pandemics, such as the COVID-19 pandemic, and other events beyond our control, and our sales opportunities may also be affected by such events. Natural disasters including tornados, hurricanes, floods and earthquakes may damage the facilities of our customers or those of their suppliers or retailers or their other operations, which could lead to reduced revenue for our customers and thus reduced sales. In addition, a substantial portion of our facilities, including our headquarters, are located in Northern California, an area susceptible to earthquakes. We do not carry earthquake insurance for earthquake-related losses. Despite our implementation of network security measures, our servers are vulnerable to computer viruses, break-ins, and similar disruptions from unauthorized tampering with our computer systems. We may not
carry sufficient business interruption insurance to compensate us for losses that may occur as a result of any of these events.

Additionally, our customers may face a number of potential business interruption risks that are beyond our respective control. For example, our customers depend on the continuous availability of our cloud-based offerings. Our cloud-based offerings are vulnerable to damage or interruption from a variety of sources, including damage or interruption caused by telecommunications or computer systems failure, fire, earthquake, power loss, cyberattack, human error, terrorist acts, and war. We use a variety of third-party data centers and do not control their operation. These facilities and networks may experience technical failures and downtime, may fail to distribute appropriate updates, or may fail to meet the increased requirements of a growing customer base, any of which could temporarily or permanently expose our customers’ networks, leaving their networks unprotected against the latest security threats, or, in the case of technical failures and downtime of a customer’s security operation center, all security threats. Depending upon how customers have configured their use of our products and services, network downtime within our data centers may also prevent certain customers from being able to access the Internet during the period of such network downtime.

To the extent that such events disrupt our business or the business of our current or prospective customers, or adversely impact our reputation, such events could adversely affect our business, financial condition, results of operations, and cash flows.

Risks Related to Our Indebtedness

Our substantial leverage could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our market, expose us to interest rate risk, and prevent us from timely satisfying our obligations.

As of June 27, 2020, our total debt outstanding under our Senior Secured Credit Facilities was approximately $4,781 million and additional unused borrowing capacity under our Revolving Credit Facility was approximately $496 million. For a description of our Senior Secured Credit Facilities and definitions of capitalized terms used in this section, see “Description of Certain Indebtedness.” We intend to cause Foundation Technology Worldwide to repay approximately $ million of our Second Lien Term Loan with the proceeds from this offering. See “Use of Proceeds.” If we cannot generate sufficient cash flow from operations to service our debt, we may need to refinance our debt, dispose of assets, or issue equity to obtain necessary funds; we do not know whether we will be able to take any of such actions on a timely basis or on terms satisfactory to us or at all.

Our high degree of leverage could have important consequences, including:

- making it more difficult for us to make payments on the Senior Secured Credit Facilities and our other obligations;
- increasing our vulnerability to general economic and market conditions and to changes in the industries in which we compete;
- requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, thereby reducing our ability to use our cash flow to fund our operations, future working capital, capital expenditures, investments or acquisitions, future strategic business opportunities, or other general corporate requirements;
- restricting us from making acquisitions or causing us to make divestitures or similar transactions;
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, investments, acquisitions, and general corporate or other purposes;
- limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who are less highly leveraged; and
- increasing our cost of borrowing.
Borrowings under our Senior Secured Credit Facilities are at variable rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations may increase even though the amount borrowed remains the same, and our net income and cash flows, including cash available for servicing our indebtedness, will correspondingly decrease.

Restrictions imposed by our outstanding indebtedness and any future indebtedness may limit our ability to operate our business and to finance our future operations or capital needs or to engage in acquisitions or other business activities necessary to achieve growth.

The terms of our outstanding indebtedness restrict us from engaging in specified types of transactions. These covenants restrict our ability to, among other things:

- incur additional indebtedness;
- create or incur liens;
- engage in consolidations, amalgamations, mergers, liquidations, dissolutions, or dispositions;
- pay dividends and distributions on, or purchase, redeem, defease, or otherwise acquire or retire for value, our capital stock;
- make acquisitions, investments, loans (including guarantees), advances, or capital contributions;
- create negative pledges or restrictions on the payment of dividends or payment of other amounts owed from subsidiaries;
- sell, transfer, or otherwise dispose of assets, including capital stock of subsidiaries;
- make prepayments or repurchases of debt that is contractually subordinated with respect to right of payment or security;
- engage in certain transactions with affiliates;
- modify certain documents governing debt that is subordinated with respect to right of payment;
- change our fiscal year; and
- change our material lines of business.

In addition, our First Lien Credit Agreement includes a financial covenant which requires that, at the end of each fiscal quarter, for so long as the aggregate principal amount of borrowings under the Revolving Credit Facility exceeds 35% of the aggregate commitments under the Revolving Credit Facility, our first lien net leverage ratio cannot exceed 6.30 to 1.00. Our ability to comply with this financial covenant can be affected by events beyond our control, and we may not be able to satisfy it. See "Description of Certain Indebtedness." As a result of these restrictions, we may be:

- limited in how we conduct our business;
- unable to raise additional debt or equity financing to operate during general economic or business downturns;
- unable to compete effectively or to take advantage of new business opportunities; and/or
- limited in our ability to grow in accordance with, or otherwise pursue, our business strategy.

Our Senior Secured Credit Facilities also contain numerous affirmative covenants that will remain in effect as long as our Senior Secured Credit Facilities remain outstanding. We are also required to make mandatory prepayments of the obligations under our Senior Secured Credit Facilities in certain circumstances, including upon certain asset sales or receipt of certain insurance proceeds or condemnation awards, upon certain issuances of debt, and, annually, with a portion of our excess cash flow.
We cannot guarantee that we will be able to maintain compliance with these covenants or, if we fail to do so, that we will be able to obtain waivers from the lenders or investors and/or amend the covenants. Even if we comply with all of the applicable covenants, the restrictions on the conduct of our business could adversely affect our business, among other things, limiting our ability to take advantage of financings, mergers, acquisitions, investments, and other corporate opportunities that may be beneficial to our business. Even if our Senior Secured Credit Facilities are terminated, any additional debt that we incur in the future could subject us to similar or additional covenants. See “Description of Certain Indebtedness.”

A breach of any of the covenants in the credit agreements governing our Senior Secured Credit Facilities could result in an event of default, which, if not cured or waived, could trigger acceleration of our indebtedness and an increase in the interest rates applicable to such indebtedness, and may result in the acceleration of or default under any other debt we may incur in the future to which a cross-acceleration or cross-default provision applies. The acceleration of the indebtedness under our Senior Secured Credit Facilities or under any other indebtedness could have a material adverse effect on our business, results of operations, and financial condition. In the event of an event of default under our existing or future credit facilities, the applicable lenders could elect to terminate borrowing commitments and declare all borrowings and loans outstanding, together with accrued and unpaid interest and any fees and other obligations, to be due and payable. In addition, we have granted a security interest in a significant portion of our assets to secure our obligations under our Senior Secured Credit Facilities. During the existence of an event of default under our Senior Secured Credit Facilities, the applicable lenders could exercise their rights and remedies thereunder, including by way of initiating foreclosure proceedings against any assets constituting collateral for our obligations under the Senior Secured Credit Facilities.

We may be unable to generate sufficient cash flow to satisfy our significant debt service obligations, which could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

Our ability to make scheduled payments on or to refinance our debt obligations depends on our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business, legislative, regulatory, and other factors beyond our control. We may not be able to maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and/or interest on our indebtedness. If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay investments, acquisitions, capital expenditures, and payments on account of other obligations, seek additional capital, restructure or refinance our indebtedness, or sell assets. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and could require us to comply with more onerous covenants, which could further restrict our business operations. In addition, we cannot assure you that we will be able to refinance any of our indebtedness on commercially reasonable terms, or at all.

If we are at any point unable to repay or otherwise refinance our indebtedness when due, or if any other event of default is not cured or waived, the applicable lenders could accelerate our outstanding obligations or proceed against the collateral granted to them to secure that indebtedness, which could force us into bankruptcy or liquidation. In the event the applicable lenders accelerate the repayment of our borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness. Any acceleration of amounts due under the agreements governing our Senior Secured Credit Facilities or the exercise by the applicable lenders of their rights under the security documents would likely have a material adverse effect on our business.
We will require a significant amount of cash to service our indebtedness. The ability to generate cash or refinance our indebtedness as it becomes due depends on many factors, some of which are beyond our control.

We are a holding company, and as such have no independent operations or material assets other than our ownership of equity interests in our subsidiaries, and our subsidiaries’ contractual arrangements with customers, and we will depend on our subsidiaries to distribute funds to us so that we may pay our obligations and expenses. Our ability to make scheduled payments on, or to refinance our respective obligations under, our indebtedness and to fund planned capital expenditures and other corporate expenses will depend on the ability of our subsidiaries to make distributions, dividends or advances to us, which in turn will depend on our subsidiaries’ future operating performance, on economic, financial, competitive, legislative, regulatory, and other factors, and any legal and regulatory restrictions on the payment of distributions and dividends to which they may be subject. Many of these factors are beyond our control. We can provide no assurance that our business will generate sufficient cash flow from operations, that currently anticipated cost savings and operating improvements will be realized or that future borrowings will be available to us in an amount sufficient to enable us to satisfy our respective obligations under our indebtedness or to fund our other needs. In order for us to satisfy our obligations under our indebtedness and fund planned capital expenditures, we must continue to execute our business strategy. If we are unable to do so, we may need to reduce or delay our planned capital expenditures or refinance all or a portion of our indebtedness on or before maturity. Significant delays in our planned capital expenditures may materially and adversely affect our future revenue prospects. In addition, we can provide no assurance that we will be able to refinance any of our indebtedness on commercially reasonable terms or at all.

Despite our level of indebtedness, we and our subsidiaries may still be able to incur substantially more debt, including off-balance sheet financing, contractual obligations, and general and commercial liabilities. This could further exacerbate the risks to our financial condition described above.

We and our subsidiaries may be able to incur significant additional indebtedness in the future, including additional tranches of term loans and/or term loan increases, increases to our revolving commitments and/or additional revolving credit facilities as well as off-balance sheet financings, contractual obligations, and general and commercial liabilities. Although the terms of Senior Secured Credit Facilities contain restrictions on the incurrence of additional indebtedness, such restrictions are subject to a number of significant exceptions and qualifications and any additional indebtedness incurred in compliance with such restrictions could be substantial. These restrictions also will not prevent us from incurring obligations that do not constitute indebtedness. If we and our subsidiaries incur significant additional indebtedness or other obligations, the related risks that we face could increase.

If the financial institutions that are part of the syndicate of our Revolving Credit Facility fail to extend credit under our facility, our liquidity and results of operations may be adversely affected.

We have access to capital through our Revolving Credit Facility, which is governed by the First Lien Credit Agreement. Each financial institution which is part of the syndicate for our Revolving Credit Facility is responsible on a several, but not joint, basis for providing a portion of the loans to be made under our Revolving Credit Facility. If any participant or group of participants with a significant portion of the commitments in our Revolving Credit Facility fails to satisfy its or their respective obligations to extend credit under the facility and we are unable to find a replacement for such participant or participants on a timely basis (if at all), our liquidity may be adversely affected.

We may be adversely affected by the phase-out of, or changes in the method of determining, the London Interbank Offered Rate (“LIBOR”) or the Euro Interbank Offered Rate (“EURIBOR”), or the replacement of LIBOR and/or EURIBOR with different reference rates.

LIBOR is the basic rate of interest used in lending between banks on the London interbank market and is widely used as a reference for setting the interest rate on U.S. dollar-denominated loans globally. EURIBOR is a
The basic rate of interest used in lending between Eurozone banks and is widely used as a reference for setting the interest rate on Euro-denominated loans globally. Our Senior Secured Credit Facilities use LIBOR and EURIBOR as reference rates such that the interest due to our creditors under those facilities is calculated using LIBOR or EURIBOR, as applicable.

On July 27, 2017, the U.K.’s Financial Conduct Authority (the authority that administers LIBOR) announced that it intends to phase out LIBOR by the end of 2021. It is unclear whether new methods of calculating LIBOR will be established such that it continues to exist after 2021, or if alternative rates or benchmarks will be adopted. Changes in the method of calculating LIBOR, or the replacement of LIBOR with an alternative rate or benchmark, may adversely affect interest rates and result in higher borrowing costs. This could materially and adversely affect our results of operations, cash flows, and liquidity. We cannot predict the effect of the potential changes to LIBOR or the establishment and use of alternative rates or benchmarks. We may need to renegotiate our Senior Secured Credit Facilities or incur other indebtedness, and changes in the method of calculating LIBOR, or the use of an alternative rate or benchmark, may negatively impact the terms of such renegotiated Senior Secured Credit Facilities or such other indebtedness. If changes are made to the method of calculating LIBOR or LIBOR ceases to exist, we may need to amend certain contracts and cannot predict what alternative rate or benchmark would be negotiated. This may result in an increase to our interest expense.

The European Money Markets Institute (the authority that administers EURIBOR) has undertaken a number of reforms in response to the EU Benchmark Regulation, which was first published in June 2016 and requires only benchmarks published by “authorized administrators” to be used in new financial contracts beginning on January 1, 2022. It is unclear whether new methods of calculating EURIBOR will be established such that it continues to exist after 2021, or if alternative rates or benchmarks will be adopted. Changes in the method of calculating EURIBOR, or the replacement of EURIBOR with an alternative rate or benchmark, may adversely affect interest rates and result in higher borrowing costs. This could materially and adversely affect our results of operations, cash flows, and liquidity. We cannot predict the effect of the potential changes to EURIBOR or the establishment and use of alternative rates or benchmarks. We may need to renegotiate our First Lien Credit Agreement or incur other indebtedness, and changes in the method of calculating EURIBOR, or the use of an alternative rate or benchmark, may negatively impact the terms of such renegotiated First Lien Credit Agreement or such other indebtedness. If changes are made to the method of calculating EURIBOR or EURIBOR ceases to exist, we may need to amend certain contracts and cannot predict what alternative rate or benchmark would be negotiated. This may result in an increase to our interest expense.

We utilize derivative financial instruments to reduce our exposure to market risks from changes in interest rates on our variable rate indebtedness, including our Senior Secured Credit Facilities, and we will be exposed to risks related to counterparty credit worthiness or non-performance of these instruments.

We have entered into interest rate swap instruments to limit our exposure to changes in variable interest rates. While our hedging strategy is designed to minimize the impact of increases in interest rates applicable to our variable rate debt, including our Senior Secured Credit Facilities, there can be no guarantee that our hedging strategy will be effective, and we may experience credit-related losses in some circumstances. See Note 15 to our audited consolidated financial statements and Note 11 to our unaudited consolidated financial statements included elsewhere in this prospectus.

Risks Related to Our Organizational Structure

Our principal asset is our interest in Foundation Technology Worldwide LLC, and we are dependent upon Foundation Technology Worldwide LLC and its consolidated subsidiaries for our results of operations, cash flows, and distributions.

Upon completion of this offering and the Reorganization Transactions, we will be a holding company and have no material assets other than our direct and indirect ownership of the LLC Units. As such, we have no
independent means of generating revenue or cash flow, and our ability to pay our taxes and operating expenses, including to satisfy our obligations under the tax receivable agreement, or declare and pay dividends in the future, if any, depend upon the results of operations and cash flows of Foundation Technology Worldwide LLC and its consolidated subsidiaries and distributions we receive from Foundation Technology Worldwide LLC. There can be no assurance that our subsidiaries will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions will permit such distributions.

We anticipate that Foundation Technology Worldwide LLC will continue to be treated as a partnership (and not as a “publicly traded partnership,” within the meaning of Section 7704(b) of the Code, subject to tax as a corporation) for U.S. federal income tax purposes and, as such, generally will not be subject to any entity-level U.S. federal income tax. Instead, taxable income will be allocated to holders of Foundation Technology Worldwide LLC Units. Accordingly, we and our subsidiaries will be required to pay income taxes on our allocable share of any net taxable income of Foundation Technology Worldwide LLC. Further, Foundation Technology Worldwide LLC and its subsidiaries may, absent an election to the contrary, be subject to material liabilities pursuant to partnership audit rules enacted pursuant to the Bipartisan Budget Act of 2015 and related guidance if, for example, its calculations of taxable income are incorrect. Further, we will be responsible for the unpaid tax liabilities of the corporate entities we acquire as part of the Reorganization Transactions, including for the taxable year (or portion thereof) of such entities ending on the date of this Offering. To the extent that we need funds and Foundation Technology Worldwide LLC and its subsidiaries are restricted from making such distributions, under applicable law or regulation, or as a result of covenants in the credit agreements of Foundation Technology Worldwide LLC and its subsidiaries, we may not be able to obtain such funds on terms acceptable to us or at all and as a result could suffer an adverse effect on our liquidity and financial condition.

We will be required to pay certain Continuing Owners for certain tax benefits we may realize or are deemed to realize in accordance with the tax receivable agreement between us and such Continuing Owners, and we expect that the payments we will be required to make will be substantial.

The contribution by certain Continuing Owners to McAfee Corp. of certain corporate entities in connection with this offering (including the Reorganization Transactions) and future exchanges of LLC Units for cash or, at our option, for shares of our Class A common stock are expected to produce or otherwise deliver to us favorable tax attributes that can reduce our taxable income. Upon the completion of this offering, we will be a party to a tax receivable agreement, under which generally we will be required to pay to certain of our Continuing Owners (collectively, the “TRA Beneficiaries”) % of the applicable cash savings, if any, in U.S. federal, state, and local income tax that we actually realize or, in certain circumstances, are deemed to realize as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) and tax basis adjustments in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) as a result of sales or exchanges of LLC Units after this offering, (iii) certain tax attributes of the corporations McAfee Corp. acquires in connection with the Reorganization Transactions (including their allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries)), and (iv) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. We generally will retain the benefit of the remaining % of the applicable tax savings.

The payment obligations under the tax receivable agreement are obligations of McAfee Corp., and we expect that the payments we will be required to make under the tax receivable agreement will be substantial. Assuming no material changes in the relevant tax law and that we earn sufficient taxable income to realize all tax benefits that are subject to the tax receivable agreement, we expect that the reduction in tax payments for us associated with the tax attributes described above would aggregate to approximately $ over years from the date of this offering based on an initial public offering price of $ per share of our Class A common stock, which is the midpoint of the price range set forth on the front cover of this prospectus, and assuming all
future sales of LLC Units in exchange for our Class A common stock would occur on the one-year anniversary of this offering at such price. In this scenario, we estimate that we would be required to pay the TRA Beneficiaries % of such amount, or $, over the -year period from the date of this offering. The actual amounts may materially differ from these hypothetical amounts, as potential future reductions in tax payments for us and tax receivable agreement payments by us will be determined in part by reference to the market value of our Class A common stock at the time of the sale and the prevailing tax rates applicable to us over the life of the tax receivable agreement and will be dependent on us generating sufficient future taxable income to realize the benefit. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Tax Receivable Agreement.” Payments under the tax receivable agreement are not conditioned on the TRA Beneficiaries’ ownership of our shares after this offering.

The actual increase in tax basis, as well as the amount and timing of any payments under the tax receivable agreement, will vary depending upon a number of factors, including the timing of sales by the Continuing Owners, the price of our Class A common stock at the time of the sales, whether such sales are taxable, the amount and timing of the taxable income we generate in the future, the tax rates then applicable to us, and the portions of our payments under the tax receivable agreement constituting imputed interest. Payments under the tax receivable agreement are expected to give rise to certain additional tax benefits attributable to either further increases in basis or in the form of deductions for imputed interest. Any such benefits that we are deemed to realize under the terms of the tax receivable agreement are covered by the tax receivable agreement and will increase the amounts due thereunder. The tax receivable agreement will provide that interest, at a rate equal to LIBOR (or if LIBOR ceases to be published, a replacement rate with similar characteristics) plus 1%, will accrue from the due date (without extensions) of the tax return to which the applicable tax benefits relate to the date of payment specified by the tax receivable agreement. In addition, where we fail to make payment by the date so specified, the tax receivable agreement generally will provide for interest to accrue on the unpaid amount from the date so specified until the date of actual payment, at a rate equal to LIBOR (or if LIBOR ceases to be published, a replacement rate with similar characteristics) plus 5%, except under certain circumstances specified in the tax receivable agreement where we are unable to make payment by such date, in which case interest will accrue at a rate equal to LIBOR (or if LIBOR ceases to be published, a replacement rate with similar characteristics) plus 1%.

Payments under the tax receivable agreement will be based in part on our tax reporting positions. We will not be reimbursed for any payments previously made under the tax receivable agreement if such basis increases or other attributes or benefits are subsequently disallowed by a taxing authority. As a result, in certain circumstances, the payments we are required to make under the tax receivable agreement could exceed the benefits that we actually realize in respect of the attributes in respect of which the tax receivable agreement required us to make payment.

In addition, the tax receivable agreement will provide that in the case of a change of control of McAfee Corp. (as defined therein) or a material breach of our obligations (that is not timely cured) under the tax receivable agreement, or if, at any time, we elect an early termination of the tax receivable agreement, our payment obligations under the tax receivable agreement will accelerate and may significantly exceed the actual benefits we realize in respect of the attributes subject to the tax receivable agreement. We will be required to make a payment to the TRA Beneficiaries covered by such termination in an amount equal to the present value of future payments (calculated using a discount rate equal to the lesser of (i) 6.5% per annum and (ii) LIBOR (or if LIBOR ceases to be published, a replacement rate with similar characteristics) plus 1%, which may differ from our, or a potential acquirer’s, then-current cost of capital) under the tax receivable agreement, which payment would be based on certain assumptions, including those relating to our future taxable income. In certain cases, a sale or other disposition of a substantial portion of assets of Foundation Technology Worldwide LLC will be treated as a change of control transaction. In these situations, our obligations under the tax receivable agreement could have a substantial negative impact on our, or a potential acquirer’s, liquidity and could have the effect of delaying, deferring, modifying, or preventing certain mergers, asset sales, other forms of business combinations, or other changes of control. These provisions of the tax receivable agreement may result in situations where the
TRA Beneficiaries have interests that differ from or are in addition to those of our other stockholders. In addition, we could be required to make payments under the tax receivable agreement that are substantial, significantly in advance of any potential actual realization of such further tax benefits, and in excess of our, or a potential acquirer’s, actual cash savings in income tax.

If we were to elect to terminate the tax receivable agreement immediately after this offering, based on an assumed initial public offering price of $ per share of our Class A common stock (the midpoint of the range set forth on the cover page of this prospectus), we estimate that we would be required to pay approximately in the aggregate under the tax receivable agreement.

Finally, because we are a holding company with no operations of our own, our ability to make payments under the tax receivable agreement is dependent on the ability of our subsidiaries to make distributions to us. The First Lien Credit Agreement and Second Lien Credit Agreement restrict the ability of our subsidiaries to make distributions to us, which could affect our ability to make payments under the tax receivable agreement. To the extent that we are unable to make payments under the tax receivable agreement as a result of restrictions in the First Lien Credit Agreement and Second Lien Credit Agreement, such payments will be deferred and will accrue interest until paid, which could negatively impact our results of operations and could also affect our liquidity in periods in which such payments are made.

In certain circumstances, under its limited liability company agreement, Foundation Technology Worldwide LLC will be required to make tax distributions to us, the Continuing Owners and the Management Owners and the distributions that Foundation Technology Worldwide LLC will be required to make may be substantial.

Funds used by Foundation Technology Worldwide LLC to satisfy its tax distribution obligations to the Continuing Owners and the Management Owners will not be available for reinvestment in our business. Moreover, the tax distributions that Foundation Technology Worldwide LLC will be required to make may be substantial, and will likely exceed (as a percentage of Foundation Technology Worldwide LLC’s net income) the overall effective tax rate applicable to a similarly situated corporate taxpayer.

As a result of potential differences in the amount of net taxable income allocable to us and to the Continuing Owners and the Management Owners, as well as the use of an assumed tax rate in calculating Foundation Technology Worldwide LLC’s tax distribution obligations to the Continuing Owners and the Management Owners, we may receive distributions significantly in excess of our tax liabilities and obligations to make payments under the tax receivable agreement. To the extent, as currently expected, we do not distribute such cash balances as dividends on shares of our Class A common stock and instead, for example, hold such cash balances or lend them to Foundation Technology Worldwide LLC, the Continuing Owners would benefit from any value attributable to such accumulated cash balances as a result of their ownership of Class A common stock following an exchange of their LLC Units for such Class A common stock. Our board of directors, in its sole discretion, will make any determination from time to time with respect to the use of any such excess cash so accumulated, which may include, among other uses, to acquire additional newly issued LLC Units from Foundation Technology Worldwide LLC at a per unit price determined by reference to the market value of the Class A common stock; to pay dividends, which may include special dividends, on its Class A common stock; to fund repurchases of its Class A common stock; to make payments under the tax receivable agreement; or any combination of the foregoing. We will have no obligation to distribute such cash (or other available cash other than any declared dividend) to our stockholders.

Our organizational structure, including the tax receivable agreement, confers certain benefits upon certain Continuing Owners, which benefits are not conferred on Class A common stockholders generally.

Our organizational structure, including the tax receivable agreement, confers certain benefits upon certain Continuing Owners, which benefits are not conferred on the holders of shares of our Class A common stock
generally. In particular, we will enter into the tax receivable agreement with Foundation Technology Worldwide LLC and the TRA Beneficiaries, which will provide for the payment by us to the TRA Beneficiaries of 99% of the amount of tax benefits, if any, that we actually realize, or in some circumstances are deemed to realize, as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) and tax basis adjustments in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) as a result of sales or exchanges of LLC Units after this offering, (iii) certain tax attributes of the corporations McAfee Corp. acquires in connection with the Reorganization Transactions (including their allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries)), and (iv) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. See “Certain Relationships and Related Party Transactions—Tax Receivable Agreement” for additional information. Although we will generally retain 99% of the amount of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for the Class A common stock.

We will not be reimbursed for any payments made to the TRA Beneficiaries under the tax receivable agreement in the event that any purported tax benefits are subsequently disallowed by the IRS.

If the IRS or a state or local taxing authority challenges the tax basis adjustments and/or deductions that give rise to payments under the tax receivable agreement and the tax basis adjustments and/or deductions are subsequently disallowed, the recipients of payments under the agreements will not reimburse us for any payments we previously made to them. Any such disallowance would be taken into account in determining future payments under the tax receivable agreement and may, therefore, reduce the amount of any such future payments. Nevertheless, if the claimed tax benefits from the tax basis adjustments and/or deductions are disallowed, our payments under the tax receivable agreement could exceed our actual tax savings, and we may not be able to recoup payments under the tax receivable agreement that were calculated on the assumption that the disallowed tax savings were available.

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

We will be subject to income taxes in the United States, and our domestic and foreign tax liabilities will be subject to the allocation of expenses in differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

• changes in the valuation of our deferred tax assets and liabilities;
• expected timing and amount of the release of any tax valuation allowances;
• tax effects of equity-based compensation;
• costs related to intercompany restructurings;
• changes in tax laws, regulations, or interpretations thereof; or
• lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates.

In addition, we may be subject to audits of our income, sales and other transaction taxes by U.S. federal, state, and local and foreign authorities. Outcomes from these audits could have an adverse effect on our financial condition and results of operations.
Risks Related to Our Class A Common Stock and this Offering

Our Sponsors and Intel will continue to have significant influence over us after this offering, including control over decisions that require the approval of stockholders, which could limit your ability to influence the outcome of matters submitted to stockholders for a vote.

We are currently controlled, and after this offering is completed will continue to be controlled, by our Sponsors and Intel. Upon completion of this offering, investment funds affiliated with our Sponsors will beneficially own % of the voting power of our outstanding Class A common stock and Class B common stock, on a combined basis (or % if the underwriters exercise in full their option to purchase additional shares), and Intel will beneficially own % of the voting power of our outstanding Class A common stock and Class B common stock, on a combined basis (or % if the underwriters exercise in full their option to purchase additional shares). As long as our Sponsors and Intel collectively own or control at least a majority of our outstanding voting power, they will have the ability to exercise substantial control and significant influence over our management and affairs and all corporate actions requiring stockholder approval, irrespective of how our other stockholders may vote, including the election and removal of directors and the size of our board of directors, any amendment of our certificate of incorporation or bylaws, or the approval of any merger or other significant corporate transaction, including a sale of substantially all of our assets. See “Description of Capital Stock.” The concentration of voting power limits your ability to influence corporate matters and, as a result, we may take actions that you do not view as beneficial. As a result, the market price of our Class A common stock could be adversely affected. Even if their collective ownership falls below 50%, our Sponsors and Intel will continue to be able to strongly influence or effectively control our decisions.

Additionally, the interests of our Sponsors and Intel may not align with the interests of our other stockholders. Our Sponsors and Intel may, in the ordinary course of their respective businesses, acquire and hold interests in businesses that compete directly or indirectly with us. Our Sponsors and Intel each may also pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us.

Certain of our directors have relationships with our Sponsors and Intel, which may cause conflicts of interest with respect to our business.

Following this offering, of our directors will be affiliated with our Sponsors and Intel. Our directors who are affiliated with our Sponsors or Intel have fiduciary duties to us and, in addition, have duties to our Sponsors and Intel. As a result, these directors may face real or apparent conflicts of interest with respect to matters affecting both us and our Sponsors, whose interests may be adverse to ours in some circumstances.

We previously identified a material weakness in our internal control over financial reporting in recent periods, which we concluded as of the end of the first quarter of fiscal 2020 had been fully remediated, and if we fail to maintain proper and effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act in the future, our ability to produce accurate and timely consolidated financial statements could be impaired, which could harm our results of operations, our ability to operate our business, and investor confidence.

In connection with the audit of our consolidated financial statements for fiscal 2018 and fiscal 2019, we and our independent registered public accounting firm identified a number of errors in our revenue recognition process that were immaterial to our consolidated financial statements, which led us to conclude we had a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our consolidated financial statements will not be prevented or detected on a timely basis. We did not maintain effective controls specifically over the accuracy of our revenue accounting and reporting, due to the lack of effective review necessary to ensure accurate reporting of revenue and deferred

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revenue. Additionally, this material weakness could have resulted in a misstatement of the aforementioned account balances or disclosures for the
periods during which the material weakness was ongoing that would have resulted in a material misstatement to the annual or interim consolidated
financial statements for such periods that would not have been prevented or detected.

We have taken numerous steps designed to address the underlying causes of the material weakness, primarily through the hiring of additional
accounting and finance personnel with responsibility for revenue accounting and reporting with relevant accounting and financial reporting experience,
reorganizing reporting and supervisory roles among our finance and accounting personnel, enhancing our training programs within our accounting and
finance department, and enhancing our internal review procedures. As of the end of the first quarter of fiscal 2020, we concluded that the
aforementioned material weakness had been fully remediated. However, our current efforts to maintain an effective control environment may not be
sufficient to prevent future material weaknesses or significant deficiencies from occurring or to promptly remediate any such future material weaknesses
or significant deficiencies.

Upon becoming a public company, we will be required to comply with the SEC’s rules implementing Sections 302 and 404 of the Sarbanes-Oxley
Act of 2002 (“Sarbanes-Oxley Act”), which will require management to certify financial and other information in our quarterly and annual reports and
provide an annual management report on the effectiveness of our controls over financial reporting. Although we will be required to disclose material
changes made in our internal controls and procedures on at least a quarterly basis, we will not be required to make our first annual assessment of our
internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act (including an auditor attestation on management’s internal
controls report) until our annual report on Form 10-K for the fiscal year ending December 25, 2021.

To comply with the internal controls requirements of being a public company, we may need to undertake various actions as our business or
applicable rules and regulations evolve, such as implementing new internal controls and procedures and hiring additional accounting or internal audit
staff that have the requisite knowledge of U.S. GAAP. Testing and maintaining internal controls can be costly, challenging, and potentially divert our
management’s attention from other matters that are important to the operation of our business.

If we identify future material weaknesses in our internal control over financial reporting, or if we are unable to comply with the demands that will
be placed upon us as a public company, including the requirements of Section 404 of the Sarbanes-Oxley Act, in a timely manner, we may be unable to
accurately report our consolidated financial results, or report them within the timeframes required by the SEC. We also could become subject to
sanctions or investigations by the SEC or other regulatory authorities. In addition, if we are unable to assert that our internal control over financial
reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal
control over financial reporting, when required, investors may lose confidence in the accuracy and completeness of our financial reports, we may face
restricted access to the capital markets, and our stock price may be adversely affected.

Moreover, no matter how well designed, internal control over financial reporting has inherent limitations. Therefore, internal control over financial
reporting determined to be effective can provide only reasonable assurance with respect to financial statement preparation and may not prevent or detect
all misstatements. Due to 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 the realities that judgments in decision-making can be incorrect,
and that breakdowns can occur because of error or mistake. Further, controls can be circumvented by the individual acts of some persons, by collusion
of two or more people or by management override of the internal controls. Additionally, projections of any evaluation of effectiveness to future periods
are subject to the risk that controls may become inadequate due to changes in conditions, or that the degree of compliance with the policies or
procedures may deteriorate. As such, we could lose investor confidence in the accuracy and completeness of our financial reports, which may have a
material adverse effect on our reputation and stock price.
Upon the listing of our shares, we will be a “controlled company” under the Exchange’s rules and, as a result, will qualify for certain exemptions from certain corporate governance requirements; you will therefore not have the same protections afforded to stockholders of companies that are subject to these governance requirements.

Because our Sponsors and Intel will continue to collectively control a majority of the voting power of our outstanding Class A common stock and Class B common stock on a combined basis after completion of this offering, we will be a “controlled company” within the meaning of the Exchange’s corporate governance standards. Under these rules, a company of which more than 50% of the voting power for the election of directors is held by an individual, group, or another company is a “controlled company” and may elect not to comply with certain corporate governance requirements, including the requirements that, within one year of the date of the listing of our Class A common stock, we have:

• a board of directors that is composed of a majority of “independent directors,” as defined under rules;
• a compensation committee that is composed entirely of independent directors; and
• a nominating and corporate governance committee that is composed entirely of independent directors.

Following this offering, we expect to have a board of directors that is composed of a majority of independent directors. However, we may utilize some or all of the other exemptions applicable to “controlled companies.” Accordingly, for so long as we are a “controlled company,” you will not have the same protections afforded to stockholders of companies that are subject to all of the Exchange’s corporate governance requirements. Our status as a controlled company could make our Class A common stock less attractive to some investors or otherwise harm our stock price.

If you purchase shares of Class A common stock in this offering, you will suffer immediate and substantial dilution of your investment.

The initial public offering price of our Class A common stock is substantially higher than the net tangible book deficit per share of our Class A common stock. Therefore, if you purchase shares of our Class A common stock in this offering, you will pay a price per share that substantially exceeds our net tangible book deficit per share after this offering. Based on an assumed initial public offering price of $ per share, the midpoint of the range set forth on the cover page of this prospectus, you will experience immediate dilution of $ per share, representing the difference between our pro forma net tangible book deficit per share after giving effect to this offering and the initial public offering price. In addition, purchasers of Class A common stock in this offering will have contributed % of the aggregate price paid by all purchasers of our stock but will own only approximately % of our Class A common stock outstanding after this offering. See “Dilution” for more detail.

Your percentage ownership in us may be diluted by future issuances of capital stock, which could reduce your influence over matters on which stockholders vote.

Pursuant to our amended and restated certificate of incorporation and amended and restated bylaws as will be in effect upon the completion of this offering, our board of directors has the authority, without action or vote of our stockholders, to issue all or any part of our authorized but unissued shares of Class A common stock, including shares issuable upon the exercise of options, or shares of our authorized but unissued preferred stock. Issuances of Class A common stock or voting preferred stock would reduce your influence over matters on which our stockholders vote and, in the case of issuances of preferred stock, would likely result in your interest in us being subject to the prior rights of holders of that preferred stock.

An active, liquid trading market for our Class A common stock may not develop, which may limit your ability to sell your shares.

Prior to this offering, there was no public market for our Class A common stock. Although we intend to list shares of our Class A common stock on the Exchange under the symbol “MCFE”, an active trading market for
our Class A shares may never develop or be sustained following this offering. The initial public offering price will be determined by negotiations among us, the selling stockholders, and the representatives (as defined herein) and may not be indicative of market prices of our Class A common stock that will prevail in the open market after the offering. A public trading market having the desirable characteristics of depth, liquidity, and orderliness depends upon the existence of willing buyers and sellers at any given time, such existence being dependent upon the individual decisions of buyers and sellers over which neither we nor any market maker has control. The failure of an active and liquid trading market to develop and continue would likely have a material adverse effect on the value of our Class A common stock. The market price of our Class A common stock may decline below the initial public offering price, and you may not be able to sell your shares of our Class A common stock at or above the price you paid in this offering, or at all. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

As a public company, we will become subject to additional laws, regulations, and stock exchange listing standards, which will impose additional costs on us and may strain our resources and divert our management's attention.

Prior to this offering, we were a private company. After this offering, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the listing requirements of the Exchange, and other applicable securities laws and regulations. Compliance with these laws and regulations will increase our legal and financial compliance costs and make some activities more difficult, time consuming, or costly. We also expect that being a public company and being subject to new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. We estimate that we will incur between $___ million and $___ million annually in expenses related to incremental insurance costs and other expenses associated with being a public company, including listing, printer, audit, and XBRL fees and investor relations costs. However, the incremental costs that we incur as a result of becoming a public company could exceed our estimate. These factors may therefore strain our resources, divert management’s attention and affect our ability to attract and retain qualified board members. Moreover, the additional demands associated with being a public company may disrupt regular operations of our business by diverting the attention of some of our senior management team away from revenue producing activities.

Our results of operations and share price may be volatile, and the market price of our Class A common stock after this offering may drop below the price you pay.

Our quarterly results of operations are likely to fluctuate in the future as a publicly traded company. In addition, securities markets worldwide have experienced, and are likely to continue to experience, significant price and volume fluctuations. This market volatility, as well as general economic, market, or political conditions, could subject the market price of our shares to wide price fluctuations regardless of our operating performance. We and the underwriters will negotiate to determine the initial public offering price. You may not be able to resell your shares at or above the initial public offering price or at all. Our results of operations and the trading price of our shares may fluctuate in response to various factors, including:

- actual or anticipated changes or fluctuations in our results of operations and whether our results of operations meet the expectations of securities analysts or investors;
- actual or anticipated changes in securities analysts’ estimates and expectations of our financial performance;
- announcements of new solutions, commercial relationships, acquisitions, or other events by us or our competitors;
- general market conditions, including volatility in the market price and trading volume of technology companies in general and of companies in the IT security industry in particular;
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• changes in how current and potential customers perceive the effectiveness of our platform in protecting against advanced cyberattacks or other reputational harm;

• network outages or disruptions of our solutions or their availability, or actual or perceived privacy, data protection, or network information breaches;

• investors’ perceptions of our prospects and the prospects of the businesses in which we participate;

• sales of large blocks of our Class A common stock, including sales by our executive officers, directors, and significant stockholders;

• announced departures of any of our key personnel;

• lawsuits threatened or filed against us or involving our industry, or both;

• changing legal or regulatory developments in the United States and other countries;

• any default or anticipated default under agreements governing our indebtedness;

• adverse publicity about us, our products and solutions, or our industry;

• effects of public health crises, such as the COVID-19 pandemic;

• general economic conditions and trends; and

• other events or factors, including those resulting from major catastrophic events, war, acts of terrorism, or responses to these events.

These and other factors, many of which are beyond our control, may cause our results of operations and the market price and demand for our shares to fluctuate substantially. While we believe that results of operations for any particular quarter are not necessarily a meaningful indication of future results, fluctuations in our quarterly results of operations could limit or prevent investors from readily selling their shares and may otherwise negatively affect the market price and liquidity of our shares. In addition, in the past, when the market price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. Such a lawsuit could also divert the time and attention of our management from our business, which could significantly harm our profitability and reputation.

The Continuing Owners have the right to have their LLC Units exchanged for cash or (at our option) shares of Class A common stock and any disclosure of such exchange or the subsequent sale (or any disclosure of an intent to enter into such an exchange or subsequent sale) of such shares of Class A common stock may cause volatility in our stock price.

As of [ ], 2020, we have an aggregate of [ ] shares of Class A common stock that are issuable upon exchange of LLC Units that are held by the Continuing Owners. We will amend and restate the existing limited liability company agreement of Foundation Technology Worldwide LLC, to, among other things, appoint McAfee Corp. as the sole managing member of Foundation Technology Worldwide LLC (the “New LLC Agreement”). Under the New LLC Agreement, subject to certain restrictions set forth therein and as described elsewhere in this prospectus, including lock-up agreements or market standoff agreements with the underwriters, the Continuing Owners will be entitled to have their LLC Units exchanged for cash or (at our option) shares of our Class A common stock. The holders of MIUs will also have the right, from time to time and subject to certain restrictions, to exchange their MIUs for LLC Units, which will then be immediately redeemed for shares of Class A Common Stock, based on the value of such MIUs relative to their applicable distribution threshold.

We cannot predict the timing, size, or disclosure of any future issuances of our Class A common stock resulting from the exchange of LLC Units or the effect, if any, that future issuances, disclosure, if any, or sales of shares of our Class A common stock may have on the market price of our Class A common stock. Sales or distributions of substantial amounts of our Class A common stock, or the perception that such sales or distributions could occur, may cause the market price of our Class A common stock to decline.

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Sales of a substantial number of shares of our Class A common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our Class A common stock. After this offering, we will have outstanding shares of Class A common stock, based on the number of shares outstanding as of and including shares of Class A common stock into which outstanding LLC Units may be exchanged, and assuming no exercises of outstanding options after . All of our directors and officers and the holders of approximately [%] of our outstanding shares and options that are not being sold in this offering will be subject to a 180-day lock-up period provided under agreements executed in connection with this offering. These shares will, however, be able to be resold after the expiration of the lock-up agreements described in the “Shares Eligible for Future Sale” section of this prospectus. Additionally, certain holders representing [%] of our outstanding capital stock and options, have not entered into lock-up agreements with the underwriters and, therefore, are not subject to the restrictions described above. These holders are subject to market standoff agreements with us, and we will not waive any of the restrictions of such market standoff agreements during the period ending 180 days after the date of this prospectus without the prior written consent of Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC on behalf of the underwriters.

We also intend to file a Form S-8 under the Securities Act of 1933, as amended (the “Securities Act”) to register all shares of Class A common stock that we may issue under our equity compensation plans. In addition, our Sponsors, Intel, and certain other holders of our equity interests have certain demand registration rights that could require us in the future to file registration statements in connection with sales of additional shares of our Class A common stock by such parties. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Stockholders Agreement.” Such sales could be significant. Once we register these shares, they can be freely resold in the public market, subject to legal or contractual restrictions, such as the lock-up agreements described in the “Underwriters (Conflicts of Interest)” section of this prospectus. As restrictions on resale end, the market price of our stock could decline if the holders of currently restricted shares sell them or are perceived by the market as intending to sell them.

We cannot guarantee the timing, amount, or payment of dividends on our Class A common stock.

Following completion of this offering, we expect that Foundation Technology Worldwide LLC will initially pay a cash distribution to its members on a quarterly basis at an aggregate annual rate of approximately $ million. McAfee Corp. is expected to receive a portion of any such distribution through the LLC Units it holds directly or indirectly through its wholly-owned subsidiaries on the record date for any such distribution declared by Foundation Technology Worldwide LLC, which is expected to equal the number of shares of Class A common stock outstanding on such date. McAfee Corp. expects to use the proceeds it receives from such quarterly distribution to declare a cash dividend on its shares of Class A common stock. If McAfee Corp. decides to pay any other dividend on shares of our Class A common stock in the future, it would likely need to cause Foundation Technology Worldwide LLC to make distributions to McAfee Corp. and its wholly-owned subsidiaries in an amount sufficient to cover such dividend. If Foundation Technology Worldwide LLC makes such distributions to McAfee Corp. and its wholly-owned subsidiaries, the other holders of LLC Units will be entitled to receive pro rata distributions, as well as, in certain cases, the holders of MIUs. The timing, declaration, amount of, and payment of any such dividends will be made at the discretion of McAfee Corp. ’s board of directors, subject to applicable laws, and will depend upon many factors, including the amount of the distribution received by McAfee Corp. from Foundation Technology Worldwide LLC, our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions, and other factors that McAfee Corp. ’s board of directors may deem relevant. Currently, the provisions of our Senior Secured Credit Facilities place certain limitations on the amount of cash dividends we can pay. See “Description of Certain Indebtedness.” Moreover, if as expected McAfee Corp. determines to initially pay a dividend following
any quarterly distributions from Foundation Technology Worldwide LLC, there can be no assurance that McAfee Corp. will continue to pay dividends in the same amounts or at all thereafter. See “Dividend Policy.” As a result, we cannot guarantee the timing, amount or payment of dividends on our Class A common stock.

If securities or industry analysts do not publish research or reports about our business, if they adversely change their recommendations regarding our shares, or if our results of operations do not meet their expectations, our share price and trading volume could decline.

The trading market for our shares will be influenced, in part, by the research and reports that industry or securities analysts publish about us or our business. We do not have any control over these analysts. Securities and industry analysts do not currently, and may never, publish research on our Company. If no securities or industry analysts commence coverage of our Company, the trading price of our shares would likely be negatively impacted. In the event securities or industry analysts initiated coverage, and one or more of these analysts cease coverage of our Company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our share price or trading volume to decline. Moreover, if one or more of the analysts who cover us downgrade our stock, or if our results of operations do not meet their expectations, our share price could decline.

A credit ratings downgrade or other negative action by a credit rating organization could adversely affect the trading price of the shares of our Class A common stock.

Credit rating agencies continually revise their ratings for companies they follow. The condition of the financial and credit markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. In addition, developments in our business and operations could lead to a ratings downgrade for us or our subsidiaries. Any such fluctuation in the rating of us or our subsidiaries may impact our ability to access debt markets in the future or increase our cost of future debt which could have a material adverse effect on our operations, and financial condition, which in return may adversely affect the trading price of shares of our Class A common stock.

Provisions of our corporate governance documents could make an acquisition of our Company more difficult and may prevent attempts by our stockholders to replace or remove our current management, even if beneficial to our stockholders.

In addition to our Sponsors’ and Intel’s beneficial ownership of a controlling percentage of our common stock, our certificate of incorporation and bylaws, and the Delaware General Corporation Law (the “DGCL”) contain provisions that could make it more difficult for a third party to acquire us, even if doing so might be beneficial to our stockholders. These provisions include a classified board of directors and the ability of our board of directors to issue preferred stock without stockholder approval that could be used to dilute a potential acquirer. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt to replace current members of our management team. As a result, you may lose your ability to sell your stock for a price in excess of the prevailing market price due to these protective measures, and efforts by stockholders to change the direction or management of the Company may be unsuccessful. See “Description of Capital Stock.”

Pursuant to the stockholders agreement entered into in connection with this offering, TPG, Intel and Thoma Bravo have also agreed to certain standstill provisions. See “Certain Relationships and Related Party Transactions—Stockholders Agreement.”

Our certificate of incorporation after this offering will designate courts in the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, and also provide that the federal district courts will be the exclusive forum for resolving any
complaint asserting a cause of action arising under the Securities Act, each of which could limit our stockholders’ ability to choose the judicial forum for disputes with us or our directors, officers, stockholders, or employees.

Our certificate of incorporation will provide that, subject to limited exceptions, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders;
- any action asserting a claim against us arising pursuant to any provision of the General Corporation Law of the State of Delaware, our certificate of incorporation or our bylaws;
- any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws;
- any other action asserting a claim against us that is governed by the internal affairs doctrine (each, a “Covered Proceeding”).

Our certificate of incorporation will also provide that the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action against us or any of our directors, officers, employees or agents and arising under the Securities Act. However, Section 22 of the Securities Act provides that federal and state courts have concurrent jurisdiction over lawsuits brought under the Securities Act or the rules and regulations thereunder. To the extent the exclusive forum provision restricts the courts in which claims arising under the Securities Act may be brought, there is uncertainty as to whether a court would enforce such a provision. We note that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. This provision does not apply to claims brought under the Exchange Act.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to these provisions. These provisions may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and employees. Alternatively, if a court were to find these provisions of our certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business and financial condition.

**Our certificate of incorporation after this offering will contain a provision renouncing our interest and expectancy in certain corporate opportunities, which could adversely impact our business.**

Each of TPG, Intel and Thoma Bravo, and the members of our board of directors who are affiliated with them, by the terms of our certificate of incorporation, will not be required to offer us any corporate opportunity of which they become aware and can take any such corporate opportunity for themselves or offer it to other companies in which they have an investment. We, by the terms of our certificate of incorporation, will expressly renounce any interest or expectancy in any such corporate opportunity to the extent permitted under applicable law, even if the opportunity is one that we or our subsidiaries might reasonably have pursued or had the ability or desire to pursue if granted the opportunity to do so. Our certificate of incorporation will not be able to be amended to eliminate our renunciation of any such corporate opportunity arising prior to the date of any such amendment.

TPG and Thoma Bravo are in the business of making investments in companies and any of TPG, Intel and Thoma Bravo may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. These potential conflicts of interest could have a material adverse effect on our business, financial condition, results of operations or prospects if TPG, Intel or Thoma Bravo allocate attractive corporate opportunities to themselves or their affiliates instead of to us.
CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based on our current beliefs, expectations, and assumptions regarding the future of our business, future plans and strategies, and other future conditions. Forward-looking statements can be identified by words such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “target,” “potential,” “will,” “would,” “could,” “should,” “continue,” “contemplate,” and other similar expressions, although not all forward-looking statements contain these identifying words.

We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements, and you should not rely on our forward-looking statements in making your investment decision. Actual results or events could differ materially from the plans, intentions, and expectations disclosed in the forward-looking statements we make. Important factors that could cause actual results and events to differ materially from those indicated in the forward-looking statements include, among others, the following:

- plans to develop and offer new products and services and enter new markets;
- our expectations with respect to the continued stability and growth of our customer base;
- anticipated trends, growth rates, and challenges in our business and in domestic and international markets;
- our financial performance, including changes in and expectations with respect to revenues, and our ability to maintain profitability in the future;
- investments or potential investments in new or enhanced technologies;
- market acceptance of our solutions;
- the success of our business strategy, including the growth in the market for cloud-based security solutions, acceptance of our own cloud-based solutions, and changes in our business model and operations;
- our ability to cross-sell and up-sell to our existing customers;
- our ability to maintain and expand our relationships with partners and on commercially acceptable terms, including our channel and strategic partners;
- the effectiveness of our sales force, distribution channel, and marketing activities;
- the growth and development of our direct and indirect channels of distribution;
- our response to emerging and future cybersecurity risks;
- our ability to continue to innovate and enhance our solutions;
- our ability to develop new solutions and bring them to market in a timely manner;
- our ability to prevent serious errors, defects, or vulnerabilities in our solutions;
- our ability to develop solutions that interoperate with our customers’ existing systems and devices;
- our ability to maintain, protect, and enhance our brand and intellectual property;
- our continued use of open source software;
- our ability to compete against established and emerging cybersecurity companies;
- risks associated with fluctuations in exchange rates of the foreign currencies in which we conduct business;
- past and future acquisitions, investments, and other strategic investments;
The forward-looking statements in this prospectus represent our views as of the date of this prospectus. We undertake no obligation to update any forward-looking statements whether as a result of new information, future developments or otherwise.
THE REORGANIZATION TRANSACTIONS

Organizational Structure after Completion of this Offering

The diagram below depicts our organizational structure immediately following this offering, after giving effect to the Reorganization Transactions, assuming no exercise by the underwriters of their option to purchase additional shares of Class A common stock.

Immediately following this offering, after giving effect to the Reorganization Transactions, McAfee Corp. will be a holding company, and its sole material asset held directly or through wholly-owned subsidiaries will be its equity interest in Foundation Technology Worldwide LLC. As the managing member of Foundation Technology Worldwide LLC, McAfee Corp. will operate and control all of the business and affairs of Foundation Technology Worldwide LLC and, through Foundation Technology Worldwide LLC and its subsidiaries, conduct our business. Accordingly, although we will have a minority economic interest in Foundation Technology Worldwide LLC, we will have the sole voting interest in, and control the management of, Foundation Technology Worldwide LLC. As a result, McAfee Corp. will consolidate Foundation Technology
Worldwide LLC in its consolidated financial statements and will report a noncontrolling interest related to the LLC Units held by the Continuing Owners in our consolidated financial statements.

Our organizational structure will allow the Continuing LLC Owners and the Management Owners to retain their equity ownership in Foundation Technology Worldwide LLC, an entity that is intended to be classified as a partnership for U.S. federal income tax purposes, in the form of LLC Units and MIUs, respectively. Investors participating in this offering will, by contrast, hold equity in McAfee Corp., a Delaware corporation that is a domestic corporation for U.S. federal income tax purposes, in the form of shares of our Class A common stock. The Continuing LLC Owners and McAfee Corp. will incur U.S. federal and applicable state and local income taxes on their allocable share of any taxable income of Foundation Technology Worldwide LLC (as allocated pursuant to the New LLC Agreement as it will be in effect at the time of this offering). In addition, pursuant to the Reorganization Transactions we will issue shares of our Class B common stock to the Continuing LLC Owners in an amount equal to the number of LLC Units held by each such Continuing LLC Owner. Shares of our Class B common stock will vote together with shares of our Class A common stock as a single class, except as otherwise required by law or pursuant to our amended and restated certificate of incorporation or amended and restated bylaws, as will be in effect following the completion of this offering. See “Description of Capital Stock—Common Stock.” After completion of this offering, the Continuing LLC Owners and the Management Owners will beneficially own % in the aggregate of our outstanding Class A common stock and Class B common stock on a combined basis. As described in more detail below, each LLC Unit of Foundation Technology Worldwide LLC held by the Continuing LLC Owners can be exchanged (together with one share of our Class B common stock) for cash or, at our option, for one share of our Class A common stock.

Incorporation of McAfee Corp.

McAfee Corp. was incorporated in Delaware on July 19, 2019. McAfee Corp. has not engaged in any business or other activities except in connection with its incorporation. McAfee Corp.’s amended and restated certificate of incorporation will authorize two classes of common stock, Class A common stock and Class B common stock, each having the terms described in “Description of Capital Stock.”

Following this offering and the Reorganization Transactions, each Continuing LLC Owner will hold a number of shares of our Class B common stock equal to the number of LLC Units held by such Continuing LLC Owner, each of which provides its holder with no economic rights but entitles the holder to one vote on matters presented to McAfee Corp.’s stockholders. See “Description of Capital Stock—Common Stock.” Holders of Class A common stock and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law.

The Reorganization Transactions

Reorganization

In connection with the closing of this offering, we will consummate the following transactions, which we refer to as the “Reorganization Transactions”:

- we will adopt the New LLC Agreement;
- we will amend and restate McAfee Corp.’s certificate of incorporation to, among other things, (i) provide for Class A common stock and Class B common stock and (ii) issue shares of Class B common stock to the Continuing Owners and the Management Owners, on a one-to-one basis with the number of LLC Units they own (except that Management Owners will not receive shares of Class B common stock in connection with their exchange of MIUs for LLC Units), for nominal consideration;
- we will issue shares of our Class A common stock to certain of the Continuing Owners in exchange for their contribution of LLC units or the equity of certain other entities, which pursuant to the Reorganization Transactions, became our holding entity subsidiaries; and
• McAfee Corp. will enter into (i) a tax receivable agreement with the TRA Beneficiaries and (ii) a stockholders agreement and a registration rights agreement with our Sponsors and Intel. See “Certain Relationships and Related Party Transactions.”

**Exchange Mechanics**

In connection with this offering, we will adopt the New LLC Agreement, which will include exchange mechanics under which the Continuing LLC Owners (or certain permitted transferees) will have the right, from time to time and subject to certain restrictions, to exchange their LLC Units for cash (based upon the market price of the shares of our Class A common stock) or, at our option, for shares of our Class A common stock on a one-for-one basis (and McAfee Corp. will cancel an equal number of shares of Class B common stock to the exchanging member), subject to customary conversion rate adjustments for stock splits, stock dividends, reclassifications and other similar transactions. The holders of MIUs will also have the right, from time to time and subject to certain restrictions, to exchange their MIUs for LLC Units, which will then be immediately redeemed for shares of Class A Common Stock, based on the value of such MIUs relative to their applicable distribution threshold.

**Tax Receivable Agreement**

The contribution by the Continuing Owners to McAfee Corp. of certain corporate entities in connection with this offering (including the Reorganization Transactions) and future exchanges of LLC Units for cash or, at our option, shares of our Class A common stock are expected to produce or otherwise deliver to us favorable tax attributes that can reduce our taxable income. Prior to the completion of this offering, we will enter into a tax receivable agreement, under which generally we will be required to pay to the TRA Beneficiaries % of the applicable cash savings, if any, in U.S. federal, state, and local income tax that we actually realize or, in certain circumstances, are deemed to realize as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (iii) certain tax attributes of the corporations McAfee Corp. acquires in connection with the Reorganization Transactions (including their allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries)), and (iv) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. We generally will retain the benefit of the remaining % of the applicable tax savings.

Pursuant to the exchange mechanics described above, from time to time we may be required to acquire LLC Units of Foundation Technology Worldwide LLC from the holders thereof for cash or, at our option, shares of our Class A common stock. An exchange of LLC Units is intended to be treated as a purchase of such LLC Units for U.S. federal income tax purposes. Each of Foundation Technology Worldwide LLC and McAfee Finance 2, LLC, a subsidiary of Foundation Technology Worldwide LLC intended to be treated as a partnership for U.S. federal income tax purposes and through which Foundation Technology Worldwide LLC owns its interests in the assets of the McAfee business, intends to have an election under Section 754 of the Code in effect for taxable years in which such sales or exchanges of LLC Units occur. Pursuant to the Section 754 election, sales of LLC Units are expected to result in an increase in the tax basis of tangible and intangible assets of Foundation Technology Worldwide LLC and certain of its subsidiaries, including McAfee Finance 2, LLC. When we acquire LLC Units from the Continuing LLC Owners, we expect that both the existing basis for certain assets and the anticipated basis adjustments will increase depreciation and amortization deductions allocable to us for tax purposes from Foundation Technology Worldwide LLC, and therefore reduce the amount of income tax we would otherwise be required to pay in the future to various tax authorities. This increase in tax basis may also decrease gain (or increase loss) on future dispositions of certain assets of Foundation Technology Worldwide LLC and its subsidiaries to the extent increased tax basis is allocated to those capital assets.
**Stockholders Agreement**

In connection with this offering, we intend to enter into a stockholders agreement with investment funds affiliated with our Sponsors, Intel, and certain other stockholders. Pursuant to the stockholders agreement, we will be required to take all necessary action to cause the board of directors and its committees to include director candidates designated by TPG and Intel in the slate of director nominees recommended by the board of directors for election by our stockholders. These nomination rights are described in this prospectus in the sections titled “Management—Board Composition and Director Independence” and “Management—Board Committees.” The stockholders agreement will also provide that we will obtain customary director indemnity insurance. Pursuant to the stockholders agreement, each of TPG, Intel, and Thoma Bravo also agree to certain standstill provisions pursuant to which it is restricted from, among other things, acquiring our securities if that would result in it owning more than 49% of our outstanding voting power without our consent.

**Registration Rights Agreement**

We intend to enter into a registration rights agreement with our Sponsors, Intel, certain other stockholders, and our Chief Executive Officer in connection with this offering. The registration rights agreement will provide our Sponsors and Intel certain registration rights whereby, at any time following our initial public offering and the expiration of any related lock-up period, our Sponsors and Intel can require us to register under the Securities Act shares of Class A common stock, including shares issuable to them upon exchange of their equity ownership in Foundation Technology Worldwide LLC.

**This Offering**

In connection with the completion of this offering, we will issue shares of our Class A common stock to the purchasers in this offering (or shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock), assuming the shares are offered at $ per share (the midpoint of the price range listed on the cover page of this prospectus), after deducting underwriting discounts and commissions but before offering expenses. We intend to use the net proceeds we receive to purchase (directly or indirectly through subsidiaries) (i) newly issued LLC Units from Foundation Technology Worldwide LLC and (ii) issued and outstanding LLC Units and an equal number of shares of Class B common stock from certain Continuing LLC Owners (or LLC Units and an equal number of shares of Class B common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock) at a purchase price per interest equal to the initial public offering price of Class A common stock, less underwriting discounts and commissions. Assuming that the shares of Class A common stock to be sold in this offering are sold at $ per share, which is the midpoint of the price range on the front cover of this prospectus, at the time of this offering, we will purchase newly issued LLC Units from Foundation Technology Worldwide LLC for an aggregate of $ million (or LLC Units for an aggregate of $ million if the underwriters exercise in full their option to purchase additional shares of Class A common stock), collectively representing % of Foundation Technology Worldwide LLC’s outstanding LLC Units (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock). Foundation Technology Worldwide LLC will use the proceeds contributed to it as described in the section titled “Use of Proceeds” and will bear or reimburse McAfee Corp. for all of the expenses of this offering. Accordingly, following this offering, we will hold (directly or indirectly through subsidiaries) a number of LLC Units that is equal to the sum of the number of shares of Class A common stock that we have issued to investors in this offering plus the number of shares of Class A common stock that we have issued to those of our pre-IPO investors and certain of their affiliates who will receive shares of Class A common stock in connection with the Reorganization Transactions as well as members of management who elect to exchange their MIUs for Class A common stock.
INDUSTRY AND MARKET DATA

This prospectus includes market data with respect to the computer software industry. In some cases we rely on and refer to market data and certain industry forecasts that were obtained from third-party surveys, market research, consultant surveys, publicly available information and industry publications and surveys, and in some cases, the information has been developed by us for purposes of this offering based on our existing data or data available from known sources or other proprietary research and analysis and is believed by us to have been prepared in a reasonable manner.

These sources of certain statistical data, estimates, and forecasts contained in this prospectus are the following independent industry publications or reports:

- eMarketer, Global Commerce 2020, Ecommerce Decelerates amid Global Retail Contraction but Remains a Bright Spot, June 2020;
- eMarketer, US Time Spent with Media 2020, Gains in Consumer Usage During the Year of COVID-19 and Beyond, April 2020;
- Frost & Sullivan, Total Addressable Market (TAM) for the Global Consumer Cyber Security and Privacy Market, August 31, 2020;
- IDC, New Media Market Model 1Q20 Deliverable, 12 June 2020;
- IDC, Public Cloud Services Spending Guide Forecast Pivot, June 2020;
- IDC, Total Addressable Market (TAM) Calculator, 2020;
- IDC, Worldwide Mobile Phone Forecast Update, 2020-2024, June 2020;
- RiskBased Security, 2019 Year End Data Breach QuickView Report, 2020; and
- Statista, Global Consumer Survey - Average for 5 Countries (US, Japan, Germany, Australia, United Kingdom), 2018 & 2019.

TRADEMARKS, TRADE NAMES, AND SERVICE MARKS

We own or have rights to trademarks, trade names, and service marks that we use in connection with the operation of our business, including “McAfee,” the McAfee logo, “LightPoint Security,” “NanoSec,” “Skyhigh,” “Skyhigh Networks,” “TunnelBear,” “Uplevel Security,” and various other marks. Solely for convenience, the trademarks, trade names and service marks referred to in this prospectus are listed without the ®, SM, and TM symbols, but we will assert our rights to our trademarks, trade names, and service marks to the fullest extent under applicable law.
USE OF PROCEEDS

We estimate that the net proceeds to us from our issuance and sale of shares of Class A common stock in this offering will be approximately $\_\_\_\_\_ million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. This estimate assumes an initial public offering price of $\_\_\_\_\_ per share, the midpoint of the price range set forth on the cover page of this prospectus.

If the underwriters exercise in full their option to purchase additional shares of Class A common stock, based on the same assumptions, we estimate our net proceeds will be approximately $\_\_\_\_\_ million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

A $1.00 increase (decrease) in the assumed initial public offering price of $\_\_\_\_\_ per share of Class A common stock, the midpoint of the price range set forth on the cover of this prospectus would increase (decrease) the net proceeds to us from this offering by $\_\_\_\_\_ million, assuming the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated expenses payable by us. An increase or decrease of 1,000,000 shares from the expected number of shares of Class A common stock to be sold by us in this offering would cause the net proceeds received by us to increase or decrease, respectively, by approximately $\_\_\_\_\_ million, assuming the assumed initial public offering price per share (the midpoint of the price range set forth on the cover page of this prospectus) remains the same. Any increase or decrease in proceeds due to a change in the initial public offering price or number of shares issued would increase or decrease, respectively, the amount of net proceeds contributed to Foundation Technology Worldwide LLC to be used by it for working capital and general corporate purposes.

We intend to use the net proceeds from the sale of shares of Class A common stock by the Company to purchase directly or indirectly (i) newly-issued LLC Units from Foundation Technology Worldwide LLC and (ii) LLC Units and an equal number of shares of Class B common stock from certain Continuing LLC Owners (or LLC Units and an equal number of shares of Class B common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock) at a purchase price per unit equal to the initial public offering price per share of Class A common stock, less underwriting discounts and commissions. See “The Reorganization Transactions—The Reorganization Transactions—Reorganization.” We intend to cause Foundation Technology Worldwide LLC to pay the unpaid expenses of this offering, which we estimate will be $\_\_\_\_\_ in the aggregate. We intend to use the remainder of the net proceeds from the offering as follows:

- approximately $\_\_\_\_\_ million to repay a portion of our Second Lien Term Loan (as defined in “Description of Certain Indebtedness”);
- the remainder for working capital and other general corporate purposes, including the acquisition of, or investment in complementary products, technologies, solutions, or businesses, although we have no present commitments or agreements to enter into any acquisitions or investments.

The Second Lien Term Loan provided for by our Second Lien Credit Agreement matures on September 29, 2025. The borrowings under the Second Lien Credit Facility bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 8.50% or (2) a base rate plus an applicable margin of 7.50%. The Eurodollar rate applicable to the Second Lien Credit Facility is subject to a “floor” of 1.0%. As of June 27, 2020, the weighted average interest rate under the Second Lien Credit Facility was 9.8%.

Other than as discussed above, we do not have more specific plans for the net proceeds from this offering. Accordingly, our management will have significant flexibility in applying the net proceeds from this offering, and investors will be relying on the judgment of our management regarding the application of these net proceeds. As of the date of this prospectus, we intend to invest the net proceeds in short-term interest-bearing investment-
grade securities, certificates of deposit, or government securities. The goal with respect to the investment of these net proceeds will be capital preservation and liquidity so that these funds are readily available to fund our operations.

The selling stockholders will receive approximately $\text{[insert amount]}$ million of net proceeds from their sale of shares of Class A common stock in this offering, based on an assumed initial public offering price of $\text{[insert price]}$ per share, the midpoint of the price range set forth on the cover of this prospectus, after deducting the estimated underwriting discounts and commissions. If the underwriters exercise in full their option to purchase additional shares of Class A common stock, based on the same assumptions, the selling stockholders will receive approximately $\text{[insert amount]}$ million of net proceeds, after deducting underwriting discounts and commissions. We will not receive any proceeds from the sale of shares of Class A common stock by the selling stockholders.
DIVIDEND POLICY

Following completion of this offering, we expect that Foundation Technology Worldwide LLC will initially pay a cash distribution to its members on a quarterly basis at an aggregate annual rate of approximately $\_
\_
\_ million. McAfee Corp. is expected to receive a portion of any such distribution through the LLC Units it holds directly or indirectly through its wholly-owned subsidiaries on the record date for any such distribution declared by Foundation Technology Worldwide LLC, which is expected to equal the number of shares of Class A common stock outstanding on such date. McAfee Corp. expects to use the proceeds it receives from such quarterly distribution to declare a cash dividend on its shares of Class A common stock. Holders of shares of our Class B common stock are not entitled to participate in any dividends declared by McAfee Corp.’s board of directors in respect of such shares of Class A common stock. If McAfee Corp. decides to pay any other dividend on shares of our Class A common stock in the future, it would likely need to cause Foundation Technology Worldwide LLC to make distributions to McAfee Corp. and its wholly-owned subsidiaries in an amount sufficient to cover such dividend. If Foundation Technology Worldwide LLC makes such distributions to McAfee Corp. and its wholly-owned subsidiaries, the other holders of LLC Units will be entitled to receive pro rata distributions, as well as, in certain cases, the holders of MIUs. The timing, declaration, amount of, and payment of any such dividends will be made at the discretion of McAfee Corp.’s board of directors, subject to applicable laws, and will depend upon many factors, including the amount of the distribution received by McAfee Corp. from Foundation Technology Worldwide LLC, our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions, and other factors that McAfee Corp.’s board of directors may deem relevant. Currently, the provisions of our Senior Secured Credit Facilities place certain limitations on the amount of cash dividends we can pay. See “Description of Certain Indebtedness.” Moreover, if as expected McAfee Corp. determines to initially pay a dividend following any quarterly distributions from Foundation Technology Worldwide LLC, there can be no assurance that McAfee Corp. will continue to pay dividends in the same amounts or at all thereafter.

Foundation Technology Worldwide LLC declared cash distributions to its members during the three and six months ended June 27, 2020 in the aggregate amount of $81 million and $131 million, respectively. Foundation Technology Worldwide LLC declared a cash distribution to its members in October 2020 in aggregate amount of $\_
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\_ .

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CAPITALIZATION

The following table sets forth our cash, cash equivalents and capitalization as of June 27, 2020 on an actual basis, as well as on a pro forma basis to reflect:

- the Reorganization Transactions;
- the issuance of       shares of Class A common stock by us in this offering and the receipt of approximately $    million in net proceeds from the sale of such shares, assuming an initial public offering price of $    per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses; and
- the application of the estimated net proceeds from the offering. See “Use of Proceeds.”

The pro forma information set forth in the tables below is illustrative only and will be adjusted based on the initial public offering price and other terms of this offering determined at pricing. You should read this information together with our audited and unaudited consolidated and combined financial statements and related notes appearing elsewhere in this prospectus and the information set forth under the headings “Selected Consolidated and Combined Financial and Other Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of June 27, 2020</th>
<th>Actual</th>
<th>Pro Forma(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 257</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Lien USD Term Loan(2)</td>
<td>3,048</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Lien EUR Term Loan(3)</td>
<td>1,208</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second Lien Term Loan(4)</td>
<td>525</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revolving Credit Facility</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable units</td>
<td>17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Members’/Stockholders’ (deficit) equity:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class A common stock, $ par value per share, shares authorized and shares outstanding on a pro forma as adjusted basis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class B common stock, $ par value per share, shares authorized and shares outstanding on a pro forma as adjusted basis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional paid in capital</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>(143)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Members’ equity</td>
<td>(785)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(1,354)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total members’/stockholders’ (deficit) equity</td>
<td>(2,282)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total capitalization</td>
<td>$ 2,773</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Pro forma reflects the Reorganization Transactions and application of the estimated proceeds of the offering. See “Use of Proceeds”.
(2) First Lien USD Term Loan of $3,048 million excludes discount and issuance costs of $49 million.
(3) First Lien EUR Term Loan of $1,208 million excludes discount and issuance costs of $14 million.
(4) Second Lien Term Loan of $525 million excludes discount and issuance costs of $15 million.

A $1.00 increase (decrease) in the assumed initial public offering price of $    per share of Class A common stock, the midpoint of the price range set forth on the cover of this prospectus would increase (decrease)
the net proceeds to us from this offering by $ \quad$ million, assuming the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated expenses payable by us. An increase or decrease of 1,000,000 shares from the expected number of shares of Class A common stock to be sold by us in this offering would cause the net proceeds received by us to increase or decrease, respectively, by approximately $ \quad$ million, assuming the assumed initial public offering price per share (the midpoint of the price range set forth on the cover page of this prospectus) remains the same. Any increase or decrease in proceeds due to a change in the initial public offering price or number of shares issued would increase or decrease, respectively, the amount of net proceeds contributed to Foundation Technology Worldwide LLC to be used by it for working capital and general corporate purposes.
DILUTION

The Continuing LLC Owners will maintain their LLC Units of Foundation Technology Worldwide LLC after the Reorganization Transactions. Because the Continuing LLC Owners do not own any Class A common stock or have any right to receive distributions from McAfee Corp., we have presented dilution in pro forma net tangible book value per share after this offering assuming that all of the holders of LLC Units (other than McAfee Corp.) exchanged their LLC Units for newly issued shares of Class A common stock on a one-for-one basis and the cancellation for no consideration of all of their shares of Class B common stock (which are not entitled to receive distributions or dividends, whether cash or stock from McAfee Corp.) in order to more meaningfully present the dilutive impact on the investors in this offering. We refer to the assumed exchange of all LLC Units for shares of Class A common stock as described in the previous sentence as the “Assumed Exchange.”

If you invest in our Class A common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of our Class A common stock in this offering and the pro forma net tangible book value per share of our Class A common stock after this offering. Dilution results from the fact that the initial public offering price per share of Class A common stock is substantially in excess of the net tangible book value per share of our Class A common stock attributable to the existing stockholders for our presently outstanding shares of Class A common stock, after giving effect to the Assumed Exchange. Our net tangible book value per share represents the amount of our total tangible assets (total assets less intangible assets) less total liabilities, divided by the number of shares of Class A common stock issued and outstanding, after giving effect to the Assumed Exchange.

As of [date], we had a historical net tangible book value of $[amount] million, or $[amount] per share of Class A common stock, based on [number] shares of our Class A common stock outstanding as of [date], after giving effect to the Assumed Exchange. Dilution is calculated by subtracting net tangible book value per share of our Class A common stock from the assumed initial public offering price per share of our Class A common stock.

Investors participating in this offering will incur immediate and substantial dilution. Without taking into account any other changes in such net tangible book value after [date], after giving effect to the Reorganization Transactions, the Assumed Exchange and the sale of shares of our Class A common stock in this offering assuming an initial public offering price of $[amount] per share (the midpoint of the offering range shown on the cover of this prospectus), less the underwriting discounts and commissions and estimated offering expenses, our pro forma as adjusted net tangible book value as of would have been approximately $[amount] million, or $[amount] per share of Class A common stock. This amount represents an immediate decrease in net tangible book value of $[amount] per share of our Class A common stock to the existing stockholders and immediate dilution in net tangible book value of $[amount] per share of our Class A common stock to investors purchasing shares of our Class A common stock in this offering. The following table illustrates this dilution on a per share basis:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assumed initial public offering price per share</td>
<td>$</td>
</tr>
<tr>
<td>Pro forma net tangible book value per share as of</td>
<td></td>
</tr>
<tr>
<td>Before giving effect to this offering</td>
<td>$</td>
</tr>
<tr>
<td>Decrease in net tangible book value per share</td>
<td></td>
</tr>
<tr>
<td>Attributable to investors purchasing shares in</td>
<td></td>
</tr>
<tr>
<td>this offering</td>
<td></td>
</tr>
<tr>
<td>Less: Pro forma net tangible book value per share</td>
<td></td>
</tr>
<tr>
<td>After giving effect to this offering</td>
<td></td>
</tr>
<tr>
<td>Dilution in as adjusted net tangible book value</td>
<td></td>
</tr>
<tr>
<td>Per share to investors in this offering</td>
<td></td>
</tr>
</tbody>
</table>

If the underwriters exercise their option in full to purchase additional shares, the pro forma as adjusted net tangible book value per share of our Class A common stock after giving effect to this offering, the Reorganization Transactions and the Assumed Exchange would be $[amount] per share of our Class A common stock. This represents a decrease in pro forma as adjusted net tangible book value of $[amount] per share of our Class A common stock to existing stockholders and dilution in pro forma as adjusted net tangible book value of $[amount] per share of our Class A common stock to new investors.
Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share would decrease (increase) the pro forma as adjusted net tangible book value per share of our Class A common stock after giving effect to this offering, the Reorganization Transactions and the Assumed Exchange by $ , or by $ per share of our Class A common stock, assuming no change to the number of shares of our Class A common stock offered by us as set forth on the front cover page of this prospectus and after deducting the estimated underwriting discounts and expenses. An increase or decrease of 1,000,000 shares from the expected number of shares of Class A common stock to be sold by us in this offering would cause the net proceeds received by us to increase or decrease, respectively, by approximately $ million, assuming the assumed initial public offering price per share (the midpoint of the price range set forth on the cover page of this prospectus) remains the same. Any increase or decrease in proceeds due to a change in the initial public offering price or number of shares issued would increase or decrease, respectively, the amount of net proceeds contributed to Foundation Technology Worldwide LLC to be used by it for working capital and general corporate purposes.

The following table summarizes, as of , on the pro forma as adjusted basis described above, the total number of shares of our Class A common stock purchased from us, the total consideration paid to us, and the average price per share of our Class A common stock paid by purchasers of such shares and by new investors purchasing shares of our Class A common stock in this offering.

<table>
<thead>
<tr>
<th>Shares purchased</th>
<th>Total consideration</th>
<th>Average price per share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>Existing stockholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New investors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share would increase or decrease, as applicable, the total consideration paid by new investors by $ million and increase or decrease, as applicable, the percent of total consideration paid by new investors by %, assuming the number of shares of Class A common stock we are offering, as set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions. We may also increase or decrease the number of shares of Class A common stock we are offering. An increase or decrease of 1,000,000 in the number of shares of Class A common stock offered by us would increase or decrease, as applicable, total consideration paid by new investors by $ million, assuming that the assumed initial public offering price remains the same, and after deducting estimated underwriting discounts and commissions.

The number of shares of Class A common stock to be outstanding after this offering is based on shares of Class A common stock outstanding immediately following the Reorganization Transactions and excludes the following:

- shares of Class A common stock issuable upon exchange or redemption of LLC Units, together with corresponding shares of Class B common stock;
- shares of Class A common stock issuable upon exercise of outstanding awards under our equity incentive plans as of at a weighted average exercise price of $ per share of Class A common stock;
- shares of Class A common stock reserved for future issuance under our equity incentive plans as of ; and
- shares of Class A common stock authorized for sale under the ESPP as of .

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UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following unaudited pro forma consolidated financial information reflects the impact of this offering, after giving effect to the Reorganization Transactions discussed in the section of this prospectus titled “The Reorganization Transactions.” The unaudited pro forma consolidated statements of operations data for fiscal 2019 and the 26-week period ended June 27, 2020, give effect to the Reorganization Transactions and this offering as if they had occurred on December 30, 2018. The unaudited pro forma consolidated balance sheet data as of June 27, 2020 give effect to the Reorganization Transactions and this offering as if they had occurred on June 27, 2020.

We derived the unaudited pro forma consolidated financial information set forth below by applying the pro forma adjustments to the consolidated financial statements of Foundation Technology Worldwide LLC and subsidiaries included elsewhere in this prospectus. The unaudited pro forma consolidated financial information reflects pro forma adjustments that are described in the accompanying notes and are based on available information and certain assumptions we believe are reasonable but are subject to change.

The unaudited pro forma consolidated financial information presented assumes no exercise by the underwriters of their option to purchase additional shares of Class A common stock from us and the selling stockholders.

The unaudited pro forma consolidated financial information is presented for informational purposes only and should not be considered indicative of the actual financial condition or results of operations that would have been achieved had the Reorganization Transactions and this offering been consummated on the dates indicated and does not purport to be indicative of the financial condition or results of operations as of any future date or for any future period. You should read our unaudited pro forma consolidated financial information and the accompanying notes in conjunction with the historical consolidated financial statements and related notes included elsewhere in this prospectus, as well as the financial and other information appearing elsewhere in this prospectus, including information contained in the sections titled “Risk Factors,” “Selected Consolidated and Combined Financial and Other Data,” “Use of Proceeds,” “Capitalization,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

The unaudited pro forma consolidated statements of operations for the fiscal year ended December 28, 2019 and the 26-week period ended June 27, 2020 give effect to (i) the Reorganization Transactions described under “The Reorganization Transactions,” (ii) the creation or acquisition of certain tax assets in connection with this offering and the reorganization transactions and the creation of related liabilities in connection with entering into the tax receivable agreement in connection with the Reorganization Transactions, and (iii) this offering and the expected use of the net proceeds from this offering as described under “Use of Proceeds,” as if each had occurred on December 30, 2018. The unaudited pro forma consolidated balance sheet as of June 27, 2020 gives effect to (i) the Reorganization Transactions described under “The Reorganization Transactions,” (ii) the creation or acquisition of certain tax assets in connection with this offering and the reorganization transactions and the creation of related liabilities in connection with entering into the tax receivable agreement in connection with the Reorganization Transactions, and (iii) this offering and the expected use of the net proceeds from this offering as described under “Use of Proceeds,” as if each had occurred on June 27, 2020. See “Unaudited Pro Forma Financial Information.”

The historical consolidated financial condition and results of operations of McAfee Corp. have not been presented in the accompanying unaudited pro forma consolidated financial information as McAfee Corp. is a newly incorporated entity formed on July 19, 2019, has had no business transactions or activities to date, and had no assets, liabilities, revenues, or expenses during the periods presented in this section.
# McAfee Corp. Unaudited Pro Forma Consolidated Balance Sheet

As of June 27, 2020

## Table of Contents

**MCAFEE CORP.**
**UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET**
**As of June 27, 2020**

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Historical Foundation Technology Worldwide LLC</th>
<th>Pro forma adjustments for the Reorganization Transactions</th>
<th>As adjusted before this offering</th>
<th>Pro forma adjustments</th>
<th>Pro forma McAfee Corp.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
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<tr>
<td><strong>Current assets:</strong></td>
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<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
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<td>(f)(g)</td>
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<td>Deferred costs</td>
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<tr>
<td>Other current assets</td>
<td>71</td>
<td></td>
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</tr>
<tr>
<td><strong>Total current assets</strong></td>
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<tr>
<td>Property and equipment, net</td>
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<tr>
<td>Goodwill</td>
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<td>Identified intangible assets, net</td>
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<td>Deferred tax assets</td>
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<td></td>
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</tr>
<tr>
<td>Other long-term assets</td>
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<td></td>
<td></td>
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<tr>
<td><strong>Total assets</strong></td>
<td>$5,548</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Liabilities, redeemable units, and equity</strong></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Current liabilities:</strong></td>
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<td>Accounts payable and other current liabilities</td>
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<td>Long-term debt, current portion</td>
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<tr>
<td>Accrued marketing</td>
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<td>Income taxes payable</td>
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<td>Accrued compensation and benefits</td>
<td>132</td>
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<td>Lease liabilities</td>
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<tr>
<td>Deferred revenue</td>
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<tr>
<td><strong>Total current liabilities</strong></td>
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<tr>
<td>Long-term debt, net</td>
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<tr>
<td>Deferred tax liabilities</td>
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<td>(a)</td>
<td></td>
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<tr>
<td>Other long-term liabilities</td>
<td>223</td>
<td>(a)</td>
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<tr>
<td>Deferred revenue, less current portion</td>
<td>666</td>
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<td><strong>Commitments and contingencies</strong></td>
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<tr>
<td>Redeemable units</td>
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<td><strong>Equity:</strong></td>
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</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
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<td>Members’ equity</td>
<td>(705)</td>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class A common stock</td>
<td>—</td>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class B common stock</td>
<td>—</td>
<td>(c)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional paid in capital</td>
<td>—</td>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(1,354)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retained earnings</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Members’/stockholders’ (deficit) equity attributable to McAfee Corp.</strong></td>
<td>(2,282)</td>
<td>(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noncontrolling interests</td>
<td>—</td>
<td>(c)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total equity</strong></td>
<td>(2,282)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total liabilities, redeemable units, and equity</strong></td>
<td>$5,548</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of this unaudited pro forma consolidated financial information.
### McAfee Corp.
#### Unaudited Pro Forma Consolidated Statement of Operations

For the 26-week period ended June 27, 2020

<table>
<thead>
<tr>
<th>(in millions except per share data)</th>
<th>Historical Foundation Technology Worldwide LLC</th>
<th>Pro forma adjustments for the Reorganization Transactions</th>
<th>As adjusted before this offering</th>
<th>Pro forma adjustments</th>
<th>Pro forma McAfee Corp.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$1,401</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>410</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Gross profit</td>
<td>991</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>348</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>186</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>138</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>110</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total operating expenses</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income</td>
<td>200</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Interest income (expense) and other, net</td>
<td>(150)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign exchange gain (loss), net</td>
<td>(6)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>44</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for income tax expense</td>
<td>13</td>
<td></td>
<td>(k)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) attributable to noncontrolling interests</td>
<td>—</td>
<td>(l)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) attributable to McAfee Corp.</td>
<td>$31</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) per share data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) per share:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td></td>
<td></td>
<td>(p)</td>
<td></td>
<td></td>
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<tr>
<td>Weighted average shares of Class A common stock outstanding:</td>
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<td></td>
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</tr>
<tr>
<td>Basic and diluted</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of this unaudited pro forma consolidated financial information.

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MCAFEE CORP.
UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS
For the fiscal year ended December 28, 2019

atro hiscal
Foundation
Technology
Worldwide
LLC
Pro forma
adjustments
for the
Reorganization
Transactions
As adjusted
before this
offering
Pro forma
adjustments
Pro forma
McAfee
Corp.

(in millions except per share data)  Historical  Foundation Technology Worldwide LLC  Pro forma adjustments for the Reorganization Transactions  As adjusted before this offering  Pro forma adjustments  Pro forma McAfee Corp.

<table>
<thead>
<tr>
<th>Description</th>
<th>Historical</th>
<th>Foundation Technology Worldwide LLC</th>
<th>Pro forma adjustments for the Reorganization Transactions</th>
<th>As adjusted before this offering</th>
<th>Pro forma adjustments</th>
<th>Pro forma McAfee Corp.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$2,635</td>
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<td></td>
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<tr>
<td>Cost of sales</td>
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<tr>
<td>Gross profit</td>
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<td>Operating expenses:</td>
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<tr>
<td>Sales and marketing</td>
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<td>Research and development</td>
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<tr>
<td>Amortization of intangibles</td>
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<tr>
<td>Restructuring and transition charges</td>
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</tr>
<tr>
<td>Total operating expenses</td>
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<td>Foreign exchange gain (loss), net</td>
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<tr>
<td>Income (loss) before income taxes</td>
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<tr>
<td>Provision for income tax expense</td>
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<td>Net income (loss) attributable to McAfee Corp.</td>
<td>$ (236)</td>
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</tr>
<tr>
<td>Basic and diluted</td>
<td>(w)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average shares of Class A common stock outstanding:</td>
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<td></td>
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<td></td>
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<tr>
<td>Basic and diluted</td>
<td></td>
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</tr>
</tbody>
</table>

The accompanying notes are an integral part of this unaudited pro forma consolidated financial information.

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McAfee Corp.
NOTES TO UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

PRO FORMA ADJUSTMENTS AND ASSUMPTIONS

The Company made the following pro forma adjustments and assumptions in the preparation of the unaudited pro forma consolidated balance sheet:

(a) McAfee Corp. is subject to U.S. federal and state income taxes and will file consolidated income tax returns for U.S. federal and certain state jurisdictions. These adjustments reflect the recognition of deferred taxes resulting from our status as a C corporation. Temporary differences in the book basis as compared to the tax basis of our investment in Foundation Technology Worldwide LLC resulted in an pro forma deferred tax liability of $ million as of June 27, 2020.

Prior to the completion of this offering, we will enter into a tax receivable agreement with our pre-IPO owners that provides for the payment by McAfee Corp. to such pre-IPO owners of % of the benefits, if any, that McAfee Corp. is deemed to realize (calculated using certain assumptions) as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) and tax basis adjustments in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) as a result of sales or exchanges of LLC Units after this offering, (iii) certain tax attributes of the corporations McAfee Corp. acquires in connection with the Reorganization Transactions (including their allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries)), and (iv) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. The increases in existing tax basis and tax basis adjustments generated over time may increase (for tax purposes) depreciation and amortization deductions and, therefore, may reduce the amount of tax that McAfee Corp. would otherwise be required to pay in the future. Actual tax benefits realized by McAfee Corp. may differ from tax benefits calculated under the tax receivable agreement as a result of the use of certain assumptions in the tax receivable agreement, including the use of an assumed weighted-average state and local income tax rate to calculate tax benefits. This payment obligation is an obligation of McAfee Corp. and not of Foundation Technology Worldwide LLC. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Tax Receivable Agreement.”

The deferred tax asset of $ million related to, and the $ million in amounts payable under, the tax receivable agreement assumes: (1) only exchanges associated with this offering, (2) a share price equal to $ per share (the midpoint of the estimated public offering price range set forth on the cover page of this prospectus), (3) no material changes in tax law, (4) the ability to utilize tax attributes and (5) future tax receivable agreement and exchange agreement payments. However, if the Continuing LLC Owners were to exchange all of their LLC Units and shares of Class B common stock, we would recognize a deferred tax asset of approximately $ million and a liability of approximately $ million, assuming: (2) a share price equal to $ per share (the midpoint of the estimated public offering price range set forth on the cover page of this prospectus), (3) no material changes in tax law, (4) the ability to utilize tax attributes and (5) future tax receivable agreement and exchange agreement payments.

For each 5% increase (decrease) in the amount of LLC Units and shares of Class B common stock exchanged by the Continuing LLC Owners, our deferred tax asset would increase (decrease) by approximately $ million and the related liability would increase (decrease) by approximately $ million, assuming that the price per share and corporate tax rate remain the same. For each $1.00 increase (decrease) in the assumed share price of $ per share, our deferred tax asset would increase (decrease) by approximately $ million and the related liability would increase (decrease) by approximately $ million, assuming that the number of LLC Units and shares of Class B common stock...
stock exchanged by the Continuing LLC Owners and the corporate tax rate remain the same. These amounts are estimates and have been prepared for informational purposes only. The actual amount of deferred tax assets and related liabilities that we will recognize will differ based on, among other things, the timing of the exchanges and purchases, the price of our shares of Class A common stock at the time of the exchange or purchase, and the tax rates then in effect.

We anticipate that we will account for the income tax effects resulting from future taxable exchanges of LLC Units by Continuing LLC Owners for shares of our Class A common stock or cash by recognizing an increase in our deferred tax assets, based on enacted tax rates at the date of each exchange. Further, we will evaluate the likelihood that we will realize the benefit represented by the deferred tax asset, and, to the extent that we estimate that it is more likely than not that we will not realize the benefit, we will reduce the carrying amount of the deferred tax asset with a valuation allowance.

The amounts to be recorded for both the deferred tax assets and the liability for our obligations under the tax receivable agreement have been estimated. All of the effects of changes in any of our estimates after the date of the purchase will be included in net income. Similarly, the effect of subsequent changes in the enacted tax rates will be included in net income.

(b) As a C corporation, we will no longer record members’ equity in the consolidated balance sheet. To reflect the C corporation structure of our equity, we will separately present the value of our common stock, additional paid-in capital and retained earnings. The portion of the reclassification of members’ equity associated with additional paid-in capital was estimated as the remainder of capital contributions we have received less the $ attributed to the par value of the common stock and the $ million allocated to the noncontrolling interest.

(c) As a result of the Reorganization Transactions, the limited liability company agreement of Foundation Technology Worldwide LLC will be amended and restated to, among other things, designate McAfee Corp. as the sole managing member of Foundation Technology Worldwide LLC. As sole managing member, McAfee Corp. will exclusively operate and control the business and affairs of Foundation Technology Worldwide LLC. As the Continuing LLC Owners will control both McAfee Corp. and Foundation Technology Worldwide LLC following the Reorganization Transactions, we will consolidate Foundation Technology Worldwide LLC for accounting purposes, and Foundation Technology Worldwide LLC will be considered our predecessor for accounting purposes. The LLC Units owned by the Continuing LLC Owners will be considered noncontrolling interests in the consolidated financial statements of McAfee Corp. The amount allocated to noncontrolling interests represents the proportional interest in the pro forma consolidated total equity of Foundation Technology Worldwide LLC owned by those LLC Unit holders.

In connection with the Reorganization Transactions, the following Class A and Class B shares will be issued:

<table>
<thead>
<tr>
<th>Class A shares</th>
<th>Continuing LLC Owners</th>
<th>Continuing Corporate Owners</th>
<th>Management Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In connection with the offering, shares of newly issued Class A common stock will be issued and sold by the Company, shares of Class A common stock will be sold by the selling stockholders, and LLC Units, together with an equal number of shares of Class B common stock, will be purchased by the Company directly or indirectly from the Continuing LLC Owners using a portion of the net proceeds from the sale of shares of Class A common stock by the Company in this offering.
Following the Reorganization Transactions and the offering, McAfee Corp. will hold LLC Units, and the Continuing LLC Owners will hold LLC Units.

The Continuing LLC Owners, from time to time following the offering, may exchange all or a portion of their LLC Units for newly issued shares of our Class A common stock on a one-for-one basis (or certain cash amounts). Shares of our Class B common stock will be cancelled on a one-for-one basis upon the exchange of LLC Units of a Continuing LLC Owner for shares of our Class A Common Stock pursuant to the terms of the New LLC Agreement. The decision whether to tender LLC Units to Foundation Technology Worldwide LLC will be made solely at the discretion of the Continuing LLC Owners. The holders of MIUs will also have the right, from time to time and subject to certain restrictions, to exchange their MIUs for LLC Units, which will then be immediately redeemed for shares of Class A Common Stock (or certain cash amounts), based on the value of such MIUs relative to their applicable distribution threshold.

(d) Represents the net proceeds from the sale of shares of our Class A common stock by the Company in this offering based on an assumed initial public offering price of $ per share (the midpoint of the estimated public offering price range set forth on the cover page of this prospectus), after deducting estimated underwriting discounts and commissions and the related use of the proceeds to purchase newly-issued LLC Units from Foundation Technology Worldwide LLC and to purchase LLC Units and an equal number of shares of Class B common stock from certain Continuing LLC Owners.

(e) Represents the expense of $ million recognized at the time of this offering in connection with the termination of our management services agreement with certain affiliates of our Sponsors and Intel. For the year ended December 28, 2019, Foundation Technology Worldwide LLC recognized expenses totaling $8 million related to management fees paid to certain affiliates of our Sponsors and Intel. In connection with this offering, the management services agreement will be terminated, and we do not plan to execute a new management services agreement. This pro forma adjustment relates solely to the management services agreement termination fee payable to certain affiliates of our Sponsors and Intel in connection with the offering.

(f) Represents expenses of $ million related to the offering that will be paid by Foundation Technology Worldwide LLC.

(g) The following sets forth the estimated sources and uses of funds in connection with the Reorganization Transactions and this offering, assuming the issuance of shares of Class A common stock at a price of per share (the midpoint of the estimated public offering price range set forth on the cover of this prospectus):

Sources:

• $ million gross cash proceeds to us from the sale of Class A common stock by the Company.

Uses:

• we intend to use the net proceeds to the Company to purchase directly or indirectly (i) newly-issued LLC Units from Foundation Technology Worldwide LLC and (ii) issued and outstanding LLC Units and an equal number of shares of Class B common stock from certain Continuing LLC Owners (or LLC Units and an equal number of shares of Class B common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock), for an aggregate of $ million;

• we intend to cause Foundation Technology Worldwide LLC to pay the unpaid expenses of this offering, which we estimate will be $ million in the aggregate;

• we intend to cause Foundation Technology Worldwide LLC to use approximately $ million of net offering proceeds to repay a portion of our Second Lien Term Loan (as defined in “Description of Certain Indebtedness”); and

• we intend to use the remainder of the net proceeds from the offering for working capital and other general corporate purposes, including the acquisition of or investment in, complementary products,
technologies, solutions, or business, although we have no present commitments or agreements to enter into any acquisitions or investments.

(h) As described in “Use of Proceeds,” we intend to cause Foundation Technology Worldwide LLC to use $ million of the net offering proceeds to repay a portion of our outstanding Second Lien Term Loan. The related impact to the pro forma consolidated balance sheet reflects the reduction in the net carrying value of our long-term debt from such repayment offset by $ of partial write-off of previously capitalized deferred issuance costs and original issuance discount, as if such repayment had occurred on June 27, 2020.

(i) Represents the equity-based compensation expense of $ recognized at the time of this offering related to the 2017 Management Incentive Plan and the MEPUs and CRSUs that vest in connection with this offering, and the incremental equity-based compensation expense of $ recognized for the additional expense associated with the replacement of unvested MEPUs and CRSUs with McAfee Corp. RSUs and options to purchase McAfee Corp. Class A common stock and the modification of certain vesting conditions with respect to those replacement awards with performance-based vesting conditions. As discussed in the notes to the unaudited pro forma statements of operations, additional expense for the MEPUs and CRSUs will be recorded in periods following this offering in accordance with the vesting provisions of those awards. The equity-based compensation adjustment of $ has been recorded as an increase to additional paid-in capital. The total effect of these adjustments of $ is recorded as an adjustment to accumulated deficit.

(j) Represents the estimated fair value of $17 million for 0.5 million MIUs subject to repurchase in April 2021, contingent upon the satisfaction of certain terms and conditions. The MIUs would no longer be repurchased upon a sale of the company or an IPO prior to the repurchase date. The MIU interests in Foundation Technology Worldwide LLC would no longer redeemable upon consummation of this offering; therefore, the estimated fair value of the MIUs has been reclassified to noncontrolling interest.

The Company made the following pro forma adjustments and assumptions in the preparation of the unaudited pro forma consolidated statement of operations for the 26-week period ended June 27, 2020:

(k) McAfee Corp. will be subject to U.S. federal income taxes, in addition to state and local taxes, with respect to its allocable share of any net taxable income of Foundation Technology Worldwide LLC. As a result, the unaudited pro forma consolidated statement of operations reflects an adjustment to our provision for income taxes to reflect an effective rate of %, which was calculated using the current U.S. federal income tax rate and the highest statutory rates apportioned to each state and local jurisdiction.

(l) The LLC Units of Foundation Technology Worldwide LLC owned by the Continuing LLC Owners will be considered noncontrolling interests in the consolidated financial statements of McAfee Corp. The pro forma adjustment reflects the allocation of Foundation Technology Worldwide LLC net income to the noncontrolling interests. Immediately following the Reorganization Transactions but disregarding the effect of this offering, the noncontrolling interests held by the Continuing LLC Owners will have % economic ownership of Foundation Technology Worldwide LLC, and as such, % of Foundation Technology Worldwide LLC’s net income will be attributable to the noncontrolling interests. The remaining economic ownership of Foundation Technology Worldwide LLC will be held directly or indirectly by McAfee Corp. following the Reorganization Transactions.

(m) Upon consummation of this offering, the noncontrolling interests’ ownership of Foundation Technology Worldwide LLC will be diluted to %, and, therefore, net income will be attributable to the noncontrolling interests based on their % ownership interest, and to McAfee Corp., which indirectly owns the remaining % of the LLC Units of Foundation Technology Worldwide LLC, based on its % interest. The noncontrolling interests in McAfee Corp. will be diluted in connection with the offering as a result of the newly-issued LLC Units acquired from Foundation Technology Worldwide LLC with the net proceeds from the offering.
For the 26-week period ended June 27, 2020, Foundation Technology Worldwide LLC recognized expenses totaling $4 million related to management fees paid to certain affiliates of our Sponsors and Intel. In connection with this offering, this management services agreement will be terminated, and we do not plan to execute a new management services agreement. This pro forma adjustment removes this expense from the Foundation Technology Worldwide LLC historical financial statements as such amounts will not be incurred following this offering.

As described in “Use of Proceeds,” we intend to cause Foundation Technology Worldwide LLC to use $\text{ }$ million of the net offering proceeds to repay a portion of our outstanding Second Lien Term Loan. The related impact to the pro forma consolidated statements of operations reflects changes to interest expense as if the repayment had occurred on December 30, 2018, including the impact on amortization of deferred issuance costs and original issuance discount as if these had been partially written off on December 30, 2018 in connection with such partial repayment. Such adjustment reflects a reduction in interest expense of $\text{ }$ million for the year 26-week period ended June 27, 2020 based on a weighted-average effective interest rate of approximately %.

The pro forma net income per share is calculated using the treasury stock method, using only the shares of Class A common stock, with consideration given to the potential dilutive effect of the LLC Units and MIUs as follows. The shares of Class B common stock have no rights to dividends or distributions, whether in cash or stock, and therefore are excluded from this calculation.

<table>
<thead>
<tr>
<th>26-week period ended June 27, 2020</th>
<th>Basic</th>
<th>Diluted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Numerator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss attributable to McAfee Corp.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denominator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average shares outstanding-basic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect of dilutive securities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dilutive effect of exchangeable LLC Units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dilutive effect of MIUs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equivalent shares</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss per share attributable to McAfee Corp.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Represents the incremental equity-based compensation expense of $\text{ }$ recognized for the additional expense associated with the modification of certain vesting conditions with respect to unvested MIU and RSU awards with performance-based vesting conditions and $\text{ }$ recognized for the additional expense associated with the replacement of unvested MEPUs and CRSUs with McAfee Corp. RSUs and options to purchase McAfee Corp. Class A common stock and the modification of certain vesting conditions with respect to those replacement awards with performance-based vesting conditions. Additional expense for the modified and replacement awards will be recorded in periods following this offering in accordance with the vesting provisions of those awards.

The Company made the following pro forma adjustments and assumptions in the preparation of the unaudited pro forma consolidated statement of operations for the fiscal year ended December 28, 2019:

McAfee Corp. will be subject to U.S. federal income taxes, in addition to state and local taxes, with respect to its allocable share of any net taxable income of Foundation Technology Worldwide LLC. As a result, the unaudited pro forma consolidated statement of operations reflects an adjustment to our provision for income taxes to reflect an effective rate of %, which was calculated using the current U.S. federal income tax rate and the highest statutory rates apportioned to each state and local jurisdiction.

The LLC Units of Foundation Technology Worldwide LLC owned by the Continuing LLC Owners will be considered noncontrolling interests in the consolidated financial statements of McAfee Corp. The pro forma adjustment reflects the allocation of Foundation Technology Worldwide LLC net income to the
noncontrolling interests. Immediately following the Reorganization Transactions but disregarding the effect of this offering, the noncontrolling
interests held by the Continuing LLC Owners will have % economic ownership of Foundation Technology Worldwide LLC, and as such, % of
Foundation Technology Worldwide LLC’s net income will be attributable to the noncontrolling interests. The remaining economic ownership
of Foundation Technology Worldwide LLC will be held, directly or indirectly, by McAfee Corp. following the Reorganization Transactions.

(t) Upon consummation of this offering, the noncontrolling interests’ ownership of Foundation Technology Worldwide LLC will be diluted to %
and, therefore, net income will be attributable to the noncontrolling interests based on their % ownership interest, and to McAfee Corp., which
indirectly owns the remaining % of the LLC Units of Foundation Technology Worldwide LLC, based on its % interest. The noncontrolling
interests in McAfee Corp. will be diluted in connection with the offering as a result of the newly-issued LLC Units acquired from Foundation
Technology Worldwide LLC with the net proceeds from the offering.

(u) For the year ended December 28, 2019, Foundation Technology Worldwide LLC recognized expenses totaling $8 million related to management
fees paid to certain affiliates of our Sponsors and Intel. In connection with this offering, this management services agreement will be terminated
and we do not plan to execute a new management services agreement. This pro forma adjustment removes this expense from the Foundation
Technology Worldwide LLC historical financial statements as such amounts will not be incurred following this offering.

(v) As described in “Use of Proceeds,” we intend to cause Foundation Technology Worldwide LLC to use $ million of the net offering
proceeds to repay a portion of our outstanding Second Lien Term Loan. The related impact to the pro forma consolidated statements of operations
reflects changes to interest expense as if the repayment had occurred on December 30, 2018, including the impact on amortization of deferred
issuance costs and original issuance discount as if these had been partially written off on December 30, 2018 in connection with such partial
repayment. Such adjustment reflects a reduction in interest expense of $ million for the year ended December 28, 2019 based on a
weighted-average effective interest rate of approximately %.

(w) The pro forma net income per share is calculated using the treasury stock method, using only the shares of Class A common stock, with
consideration given to the potential dilutive effect of the LLC Units and MIUs as follows. The shares of Class B common stock have no rights to
dividends or distributions, whether in cash or stock, and therefore are excluded from this calculation.

<table>
<thead>
<tr>
<th>Year ended December 28, 2019</th>
<th>Basic</th>
<th>Diluted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Numerator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss attributable to McAfee Corp.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denominator:</td>
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<td></td>
</tr>
<tr>
<td>Weighted average shares outstanding-basic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect of dilutive securities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dilutive effect of exchangeable LLC Units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dilutive effect of MIUs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equivalent shares</td>
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<td></td>
</tr>
<tr>
<td>Net loss per share attributable to McAfee Corp.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(x) Represents the incremental equity-based compensation expense of $ recognized for the additional expense associated with the modification
of certain vesting conditions with respect to unvested MIU and RSU awards with performance-based vesting conditions and $ recognized
for the additional expense associated with the replacement of unvested MEPUs and CRSUs with McAfee Corp. RSUs and options to purchase
McAfee Corp. Class A common stock and the modification of certain vesting conditions with respect to those replacement awards with
performance-based vesting conditions. Additional expense for the
modified and replacement awards will be recorded in periods following this offering in accordance with the vesting provisions of those awards.
SELECTED CONSOLIDATED AND COMBINED FINANCIAL AND OTHER DATA

The following selected consolidated financial and other data of Foundation Technology Worldwide LLC should be read in conjunction with “The Reorganization Transactions,” “Use of Proceeds,” “Capitalization,” “Unaudited Pro Forma Consolidated Financial Information,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and our audited and unaudited consolidated and combined financial statements and the related notes included elsewhere in this prospectus. Following this offering, Foundation Technology Worldwide LLC will be considered our legal predecessor. The terms “Predecessor” and “Predecessor Business” and “Successor” and “Successor Business” used below and throughout this prospectus refer to the periods prior and subsequent to the Sponsor Acquisition on April 3, 2017, respectively.

The selected historical financial data in the following tables for the fiscal years ended and as of December 26, 2015 and December 31, 2016 relate to the Predecessor Business and are derived from audited financial statements that are not included in this prospectus. The selected historical combined financial data in the following tables for the period from January 1, 2017 to April 3, 2017, relate to the Predecessor Business and are derived from the audited combined financial statements that are included elsewhere in this prospectus. The selected historical financial data in the following tables as of December 30, 2017 relate to the Successor Business and are derived from audited financial statements that are not included in this prospectus. The selected historical consolidated financial data in the following tables for the period from April 4, 2017 to December 30, 2017, fiscal 2018 and fiscal 2019 and as of December 29, 2018 and December 28, 2019 relate to the Successor Business and are derived from audited consolidated financial statements that are included elsewhere in this prospectus. The selected historical consolidated financial data in the following tables as of June 29, 2019 relate to the Successor Business and are derived from our unaudited consolidated balance sheet not included in this prospectus. The selected historical consolidated financial data in the following tables as of June 29, 2019, and June 27, 2020, and the unaudited consolidated balance sheet data as of June 27, 2020, relates to the Successor Business and is derived from unaudited consolidated financial statements that are included elsewhere in this prospectus.

We maintain a 52- or 53-week fiscal year that ends on the last Saturday in December. Period ended April 3, 2017 is a 13-week period starting on January 1, 2017. Period ended December 30, 2017 is a 39-week fiscal period starting on April 4, 2017. Fiscal 2018 is a 52-week year starting on December 31, 2017 and ending on December 29, 2018. Fiscal 2019 is a 52-week year starting on December 30, 2018 and ending on December 28, 2019. 26-week period ended June 29, 2019 is a 26-week period starting on December 30, 2018 and ending on June 29, 2019. 26-week period ended June 27, 2020 is a 26-week period starting on December 29, 2019 and ending on June 27, 2020.

We adopted Accounting Standards Codification, or ASC, Topic 606, Revenue from Contracts with Customers, or ASC Topic 606, on December 31, 2017 using the modified retrospective transition method. Under this method, results for reporting periods beginning on December 31, 2017 are presented in accordance with ASC Topic 606, while prior period amounts are not adjusted and continue to be reported in accordance with our historical accounting under ASC Topic 605, Revenue Recognition.
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Selected historical consolidated financial data for McAfee Corp. has not been provided, as McAfee Corp. is a newly incorporated entity and has had no business transactions or other activities to date and no assets or liabilities during the periods presented below.

The unaudited condensed consolidated financial statements were prepared on a basis consistent with our audited financial statements and include all adjustments, consisting of normal and recurring adjustments that we consider necessary for a fair statement of the financial condition and results of operations as of and for such periods. Operating results for the periods presented are not necessarily indicative of the results that may be expected in future periods, and operating results for the 26-week period ended June 27, 2020 are not necessarily indicative of results for the full year.

### Results of Operations Data

<table>
<thead>
<tr>
<th>(in millions except per unit and share data)</th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$2,271</td>
<td>$2,387</td>
<td>$586</td>
<td>$1,490</td>
</tr>
<tr>
<td>Cost of sales (1)</td>
<td>$563</td>
<td>$596</td>
<td>$163</td>
<td>$542</td>
</tr>
<tr>
<td>Gross profit</td>
<td>1,708</td>
<td>1,791</td>
<td>423</td>
<td>948</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing (1)</td>
<td>950</td>
<td>890</td>
<td>212</td>
<td>584</td>
</tr>
<tr>
<td>Research and development (1)</td>
<td>526</td>
<td>499</td>
<td>127</td>
<td>323</td>
</tr>
<tr>
<td>General and administrative (1)</td>
<td>175</td>
<td>206</td>
<td>51</td>
<td>197</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>200</td>
<td>193</td>
<td>40</td>
<td>167</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>50</td>
<td>55</td>
<td>66</td>
<td>123</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>1,901</td>
<td>1,843</td>
<td>496</td>
<td>1,354</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(162)</td>
<td>(113)</td>
<td>(79)</td>
<td>(113)</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(23)</td>
<td>(8)</td>
<td>(1)</td>
<td>(159)</td>
</tr>
<tr>
<td>Gain on divestiture</td>
<td>—</td>
<td>38</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Foreign exchange gain (loss), net</td>
<td>—</td>
<td>(9)</td>
<td>3</td>
<td>(9)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>(216)</td>
<td>(31)</td>
<td>(71)</td>
<td>(574)</td>
</tr>
<tr>
<td>Provision for income tax expense</td>
<td>56</td>
<td>64</td>
<td>8</td>
<td>33</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>(272)</td>
<td>(95)</td>
<td>(79)</td>
<td>(607)</td>
</tr>
<tr>
<td>Net income (loss) per unit, basic</td>
<td>$ (6.58)</td>
<td>$(5.48)</td>
<td>$(2.51)</td>
<td>$(1.55)</td>
</tr>
<tr>
<td>Net income (loss) per unit, diluted</td>
<td>(6.58)</td>
<td>(5.48)</td>
<td>(2.51)</td>
<td>(1.55)</td>
</tr>
<tr>
<td>Weighted-average units outstanding, basic</td>
<td>92.3</td>
<td>93.4</td>
<td>94.1</td>
<td>94.0</td>
</tr>
<tr>
<td>Weighted-average units outstanding, diluted</td>
<td>92.3</td>
<td>93.4</td>
<td>94.1</td>
<td>94.0</td>
</tr>
</tbody>
</table>

### Pro forma net income (loss) per share data:

| Pro forma net income (loss) per share, basic (2) | $ (6.58) | $(5.48) | $(2.51) | $(1.55) | $(1.55) |
| Pro forma net income (loss) per share, diluted (2) | (6.58) | (5.48) | (2.51) | (1.55) | (1.55) |

### Pro forma weighted-average shares of Class A common stock outstanding, basic (2)

| Pro forma weighted-average shares of Class A common stock outstanding, diluted (2) | 92.3 | 93.4 | 94.1 | 94.0 | 94.5 |

### Statements of Cash Flows Data

| Net cash provided by (used in): | Operating activities | $404 | $211 | $(65) | $316 | $319 | $496 | $96 | $288 |
| In investing activities | $(52) | 4 | (10) | $(39) | (67) | (63) | (24) | (33) |
| Financings activities | $(371) | (164) | (23) | 87 | 459 | (734) | (407) | (162) |

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Includes equity-based compensation expense as follows:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year Ended</td>
<td>Fiscal Year Ended</td>
<td>Period from April 4 to December 30, 2017</td>
<td>Fiscal Year Ended</td>
</tr>
<tr>
<td>Cost of sales</td>
<td>$9</td>
<td>$11</td>
<td>$3</td>
<td>$1</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>45</td>
<td>40</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Research and development</td>
<td>37</td>
<td>34</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>General and administrative</td>
<td>7</td>
<td>10</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Total equity-based compensation expense</td>
<td>$98</td>
<td>$95</td>
<td>$23</td>
<td>$8</td>
</tr>
</tbody>
</table>
We believe that these non-GAAP financial measures as presented in the below tables, when taken together with the corresponding GAAP financial measures, provide meaningful supplemental information regarding our performance by excluding certain items that may not be indicative of our business, results of operations, or outlook.

**Table of Contents**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Predecessor</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Successor</strong></td>
<td><strong>Fiscal Year Ended</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Period from January 1 to April 3, 2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Period from April 4 to December 30, 2017</strong></td>
<td><strong>Successor Fiscal Year Ended</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net revenue</td>
<td>$ 586</td>
<td>$ 1,409</td>
<td>$ 2,409</td>
<td>$ 2,635</td>
<td>$ 1,291</td>
<td>$ 1,401</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Billings</td>
<td>589</td>
<td>1,992</td>
<td>2,717</td>
<td>2,820</td>
<td>1,303</td>
<td>1,374</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(73)</td>
<td>(406)</td>
<td>(173)</td>
<td>126</td>
<td>35</td>
<td>200</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income (loss) margin</td>
<td>(12.5%)</td>
<td>(27.2%)</td>
<td>(7.2%)</td>
<td>4.8%</td>
<td>2.7%</td>
<td>14.3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (79)</td>
<td>$ (607)</td>
<td>$ (512)</td>
<td>$ (236)</td>
<td>$ (146)</td>
<td>$ 31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) margin</td>
<td>(13.5%)</td>
<td>(40.7%)</td>
<td>(21.3%)</td>
<td>(9.0%)</td>
<td>(11.3%)</td>
<td>2.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted operating income</td>
<td>$ 58</td>
<td>$ 123</td>
<td>$ 480</td>
<td>$ 733</td>
<td>$ 341</td>
<td>$ 478</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted operating income margin</td>
<td>9.9%</td>
<td>8.3%</td>
<td>19.9%</td>
<td>27.8%</td>
<td>26.4%</td>
<td>34.1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ 76</td>
<td>$ 170</td>
<td>$ 540</td>
<td>$ 799</td>
<td>$ 373</td>
<td>$ 507</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted EBITDA margin</td>
<td>13.0%</td>
<td>11.4%</td>
<td>22.4%</td>
<td>30.3%</td>
<td>28.9%</td>
<td>36.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted net income (loss)</td>
<td>$ 49</td>
<td>$ (105)</td>
<td>$ 143</td>
<td>$ 396</td>
<td>$ 163</td>
<td>$ 303</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted net income (loss) margin</td>
<td>8.4%</td>
<td>(7.0)%</td>
<td>5.9%</td>
<td>15.0%</td>
<td>12.6%</td>
<td>21.6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>$ (65)</td>
<td>$ 316</td>
<td>$ 319</td>
<td>$ 496</td>
<td>$ 96</td>
<td>$ 288</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(10)</td>
<td>(39)</td>
<td>(677)</td>
<td>(63)</td>
<td>(24)</td>
<td>(33)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>(23)</td>
<td>87</td>
<td>459</td>
<td>(734)</td>
<td>(407)</td>
<td>(162)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free cash flow</td>
<td>(94)</td>
<td>277</td>
<td>257</td>
<td>435</td>
<td>74</td>
<td>260</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For comparability between the 2017 Predecessor and 2017 Successor periods and fiscal 2018, we present net revenue for fiscal 2018 under ASC Topic 605 in the table below:

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue under ASC Topic 605</td>
<td>$ 586</td>
<td>$ 1,490</td>
<td>$ 2,507</td>
<td></td>
</tr>
</tbody>
</table>

**Consumer Segment**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue—Consumer</td>
<td>$ 258</td>
<td>$ 630</td>
<td>$ 1,161</td>
<td>$ 1,303</td>
</tr>
<tr>
<td>Billings—Consumer</td>
<td>285</td>
<td>831</td>
<td>1,266</td>
<td>1,393</td>
</tr>
<tr>
<td>Operating income (loss)—Consumer</td>
<td>$ 47</td>
<td>$ (47)</td>
<td>$ 107</td>
<td>277</td>
</tr>
<tr>
<td>Operating income (loss) margin—Consumer</td>
<td>18.2%</td>
<td>(7.5%)</td>
<td>9.2%</td>
<td>21.3%</td>
</tr>
<tr>
<td>Adjusted operating income—Consumer</td>
<td>$ 85</td>
<td>$ 198</td>
<td>$ 408</td>
<td>555</td>
</tr>
<tr>
<td>Adjusted operating income margin—Consumer</td>
<td>32.9%</td>
<td>31.4%</td>
<td>35.1%</td>
<td>42.6%</td>
</tr>
<tr>
<td>Adjusted EBITDA—Consumer</td>
<td>$ 89</td>
<td>$ 218</td>
<td>$ 431</td>
<td>580</td>
</tr>
<tr>
<td>Adjusted EBITDA margin—Consumer</td>
<td>34.6%</td>
<td>37.1%</td>
<td>44.5%</td>
<td>44.0%</td>
</tr>
</tbody>
</table>
## Enterprise Segment

<table>
<thead>
<tr>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue—Enterprise</td>
<td>$328</td>
<td>$860</td>
<td>$1,248</td>
</tr>
<tr>
<td>Billings—Enterprise</td>
<td>304</td>
<td>1,161</td>
<td>1,451</td>
</tr>
<tr>
<td>Operating income (loss)—Enterprise</td>
<td>$(120)</td>
<td>$(359)</td>
<td>$(280)</td>
</tr>
<tr>
<td>Operating income (loss) margin—Enterprise</td>
<td>(36.6)%</td>
<td>(41.7)%</td>
<td>(22.4)%</td>
</tr>
<tr>
<td>Adjusted operating income (loss)—Enterprise</td>
<td>$(27)</td>
<td>$(75)</td>
<td>$72</td>
</tr>
<tr>
<td>Adjusted operating income (loss) margin—Enterprise</td>
<td>(8.2)%</td>
<td>(8.7)%</td>
<td>5.8%</td>
</tr>
<tr>
<td>Adjusted EBITDA—Enterprise</td>
<td>$(13)</td>
<td>(48)</td>
<td>109</td>
</tr>
<tr>
<td>Adjusted EBITDA margin—Enterprise</td>
<td>(4.0)%</td>
<td>(5.6)%</td>
<td>8.7%</td>
</tr>
</tbody>
</table>

### Billings

We define billings as net revenue recognized in accordance with GAAP plus the change in deferred revenue from the beginning to the end of the period, excluding the impact of deferred revenue assumed through acquisitions during the period. We view billings as a key metric, as it includes changes in our deferred revenue during the period, which is an important indicator of future trends and is a significant percentage of future revenue.

### Total Company

The following table presents a reconciliation of our billings to our GAAP net revenue as of the periods presented:

<table>
<thead>
<tr>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$586</td>
<td>$1,400</td>
<td>$2,409</td>
</tr>
<tr>
<td>Add: Deferred revenue, end of period</td>
<td>1,772</td>
<td>1,693</td>
<td>2,107</td>
</tr>
<tr>
<td>Less: Deferred revenue, beginning of period</td>
<td>(1,769)</td>
<td>(1,191)</td>
<td>(1,761)</td>
</tr>
<tr>
<td>Less: Deferred revenue assumed through acquisitions</td>
<td>—</td>
<td>—</td>
<td>(38)</td>
</tr>
<tr>
<td>Billings</td>
<td>$589</td>
<td>$1,992</td>
<td>$2,717</td>
</tr>
</tbody>
</table>

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### Consumer Segment

The following table presents a reconciliation of our Consumer billings to our GAAP Consumer net revenue as of the periods presented:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period from January 1 to April 3, 2017</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net revenue—Consumer</td>
<td>$258</td>
<td>$630</td>
<td>$1,161</td>
<td>$1,303</td>
</tr>
<tr>
<td>Add: Deferred revenue, end of period</td>
<td>590</td>
<td>576</td>
<td>688</td>
<td>778</td>
</tr>
<tr>
<td>Less: Deferred revenue, beginning of period</td>
<td>(563)</td>
<td>(375)</td>
<td>(578)</td>
<td>(688)</td>
</tr>
<tr>
<td>Billings—Consumer</td>
<td>$285</td>
<td>$831</td>
<td>$1,266</td>
<td>$1,393</td>
</tr>
</tbody>
</table>

### Enterprise Segment

The following table presents a reconciliation of our Enterprise billings to our GAAP Enterprise net revenue as of the periods presented:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period from January 1 to April 3, 2017</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net revenue—Enterprise</td>
<td>$328</td>
<td>$860</td>
<td>$1,248</td>
<td>$1,332</td>
</tr>
<tr>
<td>Add: Deferred revenue, end of period</td>
<td>1,182</td>
<td>1,117</td>
<td>1,419</td>
<td>1,514</td>
</tr>
<tr>
<td>Less: Deferred revenue, beginning of period</td>
<td>(1,206)</td>
<td>(816)</td>
<td>(1,183)</td>
<td>(1,419)</td>
</tr>
<tr>
<td>Billings—Enterprise</td>
<td>$304</td>
<td>$1,161</td>
<td>$1,451</td>
<td>$1,427</td>
</tr>
</tbody>
</table>

### Adjusted Operating Income, Adjusted Operating Income Margin, Adjusted EBITDA, and Adjusted EBITDA Margin

We regularly monitor adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin to assess our operating performance. We define adjusted operating income for the total Company as net income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense, interest expense and other, net, provision for income tax expense, foreign exchange (gain) loss, net, and other costs that we do not believe are reflective of our ongoing operations. We define adjusted operating income for our Consumer and Enterprise segments as segment operating income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense and other costs attributable to the segment that we do not believe are reflective of the segment’s ongoing operations. We present this reconciliation of adjusted operating income (loss) to operating income for Consumer and Enterprise segments because operating income (loss) is the primary measure of profitability used to assess segment performance, and is therefore the most directly comparable GAAP financial measure for our operating segments. Adjusted operating income margin is calculated as adjusted operating income divided by net revenue. We define adjusted EBITDA as adjusted operating income, excluding the impact of depreciation expense and other non-operating costs. Adjusted EBITDA margin is calculated as adjusted EBITDA divided by net revenue. We believe presenting adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin to be more reflective of our ongoing operations and our ability to generate cash flows from operations.
EBITDA margin provides management and investors consistency and comparability with our past financial performance and facilitates period to period comparisons of operations, as it eliminates the effects of certain variations unrelated to our overall performance. Adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin have limitations as analytical tools, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted operating income and adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;
- adjusted operating income and adjusted EBITDA do not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our debt;
- adjusted operating income and adjusted EBITDA do not reflect income tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted operating income and adjusted EBITDA differently, which reduce their usefulness as comparative measures.

Because of these limitations, you should consider adjusted operating income and adjusted EBITDA alongside other financial performance measures, including operating income (loss), net income (loss) and our other GAAP results. In evaluating adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation of adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin. Adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin are not presentations made in accordance with GAAP and the use of these terms vary from other companies in our industry.
## Table of Contents

### Total Company

The following table presents a reconciliation of our adjusted operating income and adjusted EBITDA to our GAAP net income (loss) during the periods presented:

<table>
<thead>
<tr>
<th>Peeriosor from January 1 to April 3, 2017</th>
<th>Successor from April 4 to December 30, 2017</th>
<th>Fiscal Year Ended</th>
<th>Successor 26-Week Period Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td>June 28, 2019</td>
</tr>
</tbody>
</table>

(in millions, except percentages)

<table>
<thead>
<tr>
<th>Item</th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$ (79)</td>
<td>42</td>
<td>42</td>
<td>$ (146)</td>
</tr>
<tr>
<td>Add: Amortization</td>
<td>39</td>
<td>42</td>
<td>42</td>
<td>22</td>
</tr>
<tr>
<td>Add: Equity-based compensation</td>
<td>23</td>
<td>3</td>
<td>28</td>
<td>4</td>
</tr>
<tr>
<td>Add: Restructuring and transition costs</td>
<td>66</td>
<td>123</td>
<td>36</td>
<td>4</td>
</tr>
<tr>
<td>Add: Management fees</td>
<td>6</td>
<td>6</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Add: Equity-based compensation</td>
<td>23</td>
<td>8</td>
<td>27</td>
<td>4</td>
</tr>
<tr>
<td>Add: Executive severance</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Add: Provision for income tax expense</td>
<td>8</td>
<td>31</td>
<td>62</td>
<td>11</td>
</tr>
<tr>
<td>Add: Foreign exchange loss (gain), net</td>
<td>2</td>
<td>9</td>
<td>42</td>
<td>10</td>
</tr>
<tr>
<td>Adjusted operating income</td>
<td>58</td>
<td>123</td>
<td>480</td>
<td>32</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>76</td>
<td>170</td>
<td>540</td>
<td>29</td>
</tr>
<tr>
<td>Adjusted operating income margin</td>
<td>9.9%</td>
<td>8.3%</td>
<td>31.0%</td>
<td>2.2%</td>
</tr>
<tr>
<td>Adjusted EBITDA margin</td>
<td>13.0%</td>
<td>11.4%</td>
<td>30.5%</td>
<td>34.1%</td>
</tr>
</tbody>
</table>
| (1) | As a result of the Sponsor Acquisition, cash awards were provided to certain employees who held Intel equity awards in lieu of equity in Foundation Technology Worldwide LLC. In addition, as a result of the Skyhigh acquisition, cash awards were provided to certain employees who held Skyhigh equity awards in lieu of equity in Foundation Technology Worldwide LLC and vest over multiple periods based on employee service requirements. As these rollover awards reflect one-time grants to former employees of the Predecessor Business and Skyhigh Networks in connection with these transactions, and the Company does not have a comparable cash-based compensation plan or program in existence, we believe this expense is not reflective of our ongoing results.
| (2) | Represents both direct and incremental costs associated with separation from Intel, including severance, facility restructuring costs.
| (3) | Represents both direct and incremental costs associated with separation from Intel, including severance and facility restructuring costs.
| (4) | Represents management fees paid to certain affiliates of our Sponsors and Intel pursuant to the Management Services Agreement. The Management Services Agreement will terminate in connection with this offering and we will be required to pay a one-time fee of $ to such parties.
| (5) | Represents costs incurred in connection with transformation of the business post-Intel separation. Also includes the cost of workforce restructuring involving both eliminations of positions and relocations to lower cost locations in connection with MAP and other transformational initiatives, strategic initiatives to improve customer retention, activation to pay and cost synergies, inclusive of duplicative run rate costs related to facilities and data center rationalization.
| (6) | Represents severance to be paid for executive terminations not associated with a strategic restructuring event.
### Consumer Segment

The following table presents a reconciliation of our Consumer adjusted operating income and Consumer adjusted EBITDA to our GAAP Consumer operating income (loss) as of the periods presented:

<table>
<thead>
<tr>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
<th>Successor 26-Week Period Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in millions, except percentages)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income (loss)—Consumer</td>
<td>$147</td>
<td>$ (47)</td>
<td>$107</td>
<td>$177</td>
</tr>
<tr>
<td>Add: Amortization</td>
<td>15</td>
<td>193</td>
<td>260</td>
<td>253</td>
</tr>
<tr>
<td>Add: Equity-based compensation</td>
<td>6</td>
<td>3</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Add: Cash in lieu of equity awards(1)</td>
<td>—</td>
<td>10</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Add: Restructuring and transition(3)</td>
<td>—</td>
<td>8</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Add: Management fees(4)</td>
<td>17</td>
<td>35</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Add: Implementation costs of adopting ASC Topic 606</td>
<td>—</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Add: Transformation initiatives(5)</td>
<td>—</td>
<td>1</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Less: Executive severance(6)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Adjusted operating income—Consumer</td>
<td>85</td>
<td>198</td>
<td>406</td>
<td>555</td>
</tr>
<tr>
<td>Add: Depreciation</td>
<td>4</td>
<td>20</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td>Adjusted EBITDA—Consumer</td>
<td>$89</td>
<td>$218</td>
<td>$431</td>
<td>$510</td>
</tr>
<tr>
<td>Net revenue—Consumer</td>
<td>$256</td>
<td>$630</td>
<td>$1,161</td>
<td>$1,303</td>
</tr>
<tr>
<td>Operating income (loss) margin—Consumer</td>
<td>18.2%</td>
<td>(7.5)%</td>
<td>9.2%</td>
<td>21.3%</td>
</tr>
<tr>
<td>Adjusted operating income margin—Consumer</td>
<td>32.9%</td>
<td>31.4%</td>
<td>35.1%</td>
<td>42.0%</td>
</tr>
<tr>
<td>Adjusted EBITDA margin—Consumer</td>
<td>34.5%</td>
<td>34.0%</td>
<td>37.1%</td>
<td>44.5%</td>
</tr>
</tbody>
</table>

### Enterprise Segment

The following table presents a reconciliation of our Enterprise adjusted operating income and Enterprise adjusted EBITDA to our GAAP Enterprise operating income (loss) as of the periods presented:

<table>
<thead>
<tr>
<th>Predecessor Period from January 3 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor 26-Week Period Ended June 29, 2019</th>
<th>Successor 26-Week Period Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in millions, except percentages)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income (loss)—Enterprise</td>
<td>$120</td>
<td>$ (339)</td>
<td>$280</td>
<td>$171</td>
</tr>
<tr>
<td>Add: Amortization</td>
<td>27</td>
<td>146</td>
<td>222</td>
<td>217</td>
</tr>
<tr>
<td>Add: Equity-based compensation</td>
<td>17</td>
<td>5</td>
<td>23</td>
<td>21</td>
</tr>
<tr>
<td>Add: Cash in lieu of equity awards(1)</td>
<td>—</td>
<td>32</td>
<td>31</td>
<td>17</td>
</tr>
<tr>
<td>Add: Restructuring and transition(3)</td>
<td>—</td>
<td>22</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>Add: Implementation costs of adopting ASC Topic 606</td>
<td>—</td>
<td>4</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Add: Transformation initiatives(5)</td>
<td>—</td>
<td>16</td>
<td>27</td>
<td>10</td>
</tr>
<tr>
<td>Less: Executive severance(6)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td>Adjusted operating income (loss)—Enterprise</td>
<td>27</td>
<td>75</td>
<td>72</td>
<td>178</td>
</tr>
<tr>
<td>Add: Depreciation</td>
<td>14</td>
<td>27</td>
<td>37</td>
<td>41</td>
</tr>
<tr>
<td>Adjusted EBITDA—Enterprise</td>
<td>$13</td>
<td>$48</td>
<td>$109</td>
<td>$219</td>
</tr>
<tr>
<td>Net revenue—Enterprise</td>
<td>$528</td>
<td>$896</td>
<td>$1,248</td>
<td>$1,332</td>
</tr>
<tr>
<td>Operating income (loss) margin—Enterprise</td>
<td>(36.6)%</td>
<td>(41.7)%</td>
<td>(22.4)%</td>
<td>(11.3)%</td>
</tr>
<tr>
<td>Adjusted operating income (loss) margin—Enterprise</td>
<td>(8.2)%</td>
<td>(6.7)%</td>
<td>5.8%</td>
<td>13.4%</td>
</tr>
<tr>
<td>Adjusted EBITDA margin—Enterprise</td>
<td>(4.0)%</td>
<td>(5.6)%</td>
<td>8.7%</td>
<td>16.4%</td>
</tr>
</tbody>
</table>

---

The following table presents a reconciliation of our Enterprise adjusted operating income and Enterprise adjusted EBITDA to our GAAP Economic Segment operating income (loss) as of the periods presented:
Adjusted Net Income and Adjusted Net Income Margin

We regularly monitor adjusted net income, and adjusted net income margin to assess our operating performance. We define adjusted net income as net income (loss), excluding the impact of amortization of intangible assets, amortization of debt issuance costs, equity-based compensation expense, other costs, and certain non-recurring tax benefits and expenses that we do not believe to be reflective of our ongoing operations and the tax impact of these adjustments. Adjusted net income margin is calculated as adjusted net income divided by net revenue. Adjusted net income and adjusted net income margin have limitations as analytical tools, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although amortization is non-cash charge, the assets being amortized may have to be replaced in the future, and adjusted net income does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted net income does not reflect changes in, or cash requirements for, our working capital needs;
- other companies, including companies in our industry, may calculate adjusted net income differently, which reduce its usefulness as comparative measures.

Because of these limitations, you should consider adjusted net income alongside other financial performance measures, including net income (loss) and our other GAAP results. In evaluating adjusted net income and adjusted net income margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of adjusted net income and adjusted net income margin should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation of adjusted net income and adjusted net income margin. Adjusted net income and adjusted net income margin are not presentations made in accordance with GAAP and the use of these terms vary from other companies in our industry.

The following table presents a reconciliation of our adjusted net income to our GAAP net income (loss) during the periods presented:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period from</td>
<td>Period from</td>
<td>Fiscal</td>
<td>26-Week</td>
</tr>
<tr>
<td></td>
<td>January 1 to</td>
<td>April 4 to</td>
<td>Year Ended</td>
<td>Period</td>
</tr>
<tr>
<td></td>
<td>April 3,</td>
<td>December 30,</td>
<td>Ended</td>
<td>Ended</td>
</tr>
<tr>
<td></td>
<td>2017</td>
<td>2017</td>
<td>2018</td>
<td>2019</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (79)</td>
<td>$ (607)</td>
<td>$ (512)</td>
<td>$ (236)</td>
</tr>
<tr>
<td>Add: Amortization of debt discount and issuance costs</td>
<td>—</td>
<td>—</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>Add: Amortization</td>
<td>42</td>
<td>339</td>
<td>482</td>
<td>470</td>
</tr>
<tr>
<td>Add: Equity-based compensation</td>
<td>23</td>
<td>8</td>
<td>28</td>
<td>25</td>
</tr>
<tr>
<td>Add: Cash in lieu of equity awards(1)</td>
<td>—</td>
<td>42</td>
<td>36</td>
<td>19</td>
</tr>
<tr>
<td>Add: Acquisition and integration costs(2)</td>
<td>—</td>
<td>3</td>
<td>30</td>
<td>23</td>
</tr>
<tr>
<td>Add: Restructuring and transition(3)</td>
<td>66</td>
<td>123</td>
<td>36</td>
<td>22</td>
</tr>
<tr>
<td>Add: Management fees(4)</td>
<td>—</td>
<td>6</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Add: Implementation costs of adopting ASC Topic 606</td>
<td>—</td>
<td>—</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Add: Transformation initiatives(5)</td>
<td>—</td>
<td>8</td>
<td>27</td>
<td>33</td>
</tr>
<tr>
<td>Add: Executive severance(6)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>3</td>
</tr>
<tr>
<td>Less: Adjustment to provision for income taxes(7)</td>
<td>(3)</td>
<td>(30)</td>
<td>(14)</td>
<td>8</td>
</tr>
<tr>
<td>Adjusted net income (loss)</td>
<td>$ 49</td>
<td>$ (102)</td>
<td>$ 143</td>
<td>$ 396</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$ 586</td>
<td>$ 1,490</td>
<td>$ 2,409</td>
<td>$ 2,635</td>
</tr>
<tr>
<td>Net income (loss) margin</td>
<td>(13.5)%</td>
<td>(40.7)%</td>
<td>(21.3)%</td>
<td>(9.0)%</td>
</tr>
<tr>
<td>Adjusted net income (loss) margin</td>
<td>8.4%</td>
<td>7.0%</td>
<td>5.9%</td>
<td>15.0%</td>
</tr>
</tbody>
</table>

(7) Represents the tax impact of all of the above adjustments, as well as excluding the non-recurring tax benefits and expenses related to changes resulting from tax legislation, the assessment or resolution of tax audits or other significant events.
For comparability between the 2017 Predecessor and 2017 Successor periods and fiscal 2018, we present adjusted operating income, adjusted operating income margin, adjusted EBITDA, adjusted EBITDA margin, adjusted net income, and adjusted net income margin for fiscal 2018 under ASC Topic 605 in the table below:

<table>
<thead>
<tr>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal year ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period</td>
<td>Adjusted operating income under ASC Topic 605</td>
<td>Adjusted operating income under ASC Topic 605</td>
</tr>
<tr>
<td>Net revenue under ASC Topic 605 $(in millions)</td>
<td>$586</td>
<td>$1,490</td>
</tr>
<tr>
<td>Net loss under ASC Topic 605 $(in millions)</td>
<td>$(79)</td>
<td>$(607)</td>
</tr>
<tr>
<td>Adjusted operating income $(in millions)</td>
<td>58</td>
<td>123</td>
</tr>
<tr>
<td>Adjusted EBITDA under ASC Topic 605 $(in millions)</td>
<td>76</td>
<td>170</td>
</tr>
<tr>
<td>Adjusted net income under ASC Topic 605 $(in millions)</td>
<td>49</td>
<td>(105)</td>
</tr>
<tr>
<td>Net loss margin % under ASC Topic 605</td>
<td>(13.5)%</td>
<td>(40.7)%</td>
</tr>
<tr>
<td>Adjusted operating income margin % under ASC Topic 605</td>
<td>9.9%</td>
<td>8.3%</td>
</tr>
<tr>
<td>Adjusted EBITDA margin % under ASC Topic 605</td>
<td>13.0%</td>
<td>23.9%</td>
</tr>
<tr>
<td>Adjusted net income margin % under ASC Topic 605</td>
<td>8.4%</td>
<td>(7.0)%</td>
</tr>
</tbody>
</table>

**Free Cash Flow**

We define free cash flow as net cash provided by operating activities less capital expenditures. We consider free cash flow to be a liquidity measure that provides useful information to management and investors about the amount of cash generated by the business that can be used for strategic opportunities, including investing in our business, making strategic acquisitions, and strengthening the balance sheet.

The following table presents a reconciliation of our free cash flow to our GAAP cash provided by operating activities during the periods presented:

<table>
<thead>
<tr>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal year ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in millions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities $(in millions)</td>
<td>$ (65)</td>
<td>$316</td>
</tr>
<tr>
<td>Less: Capital expenditures $(1)</td>
<td>(29)</td>
<td>(39)</td>
</tr>
<tr>
<td>Free cash flow $(2)</td>
<td>$(94)</td>
<td>$277</td>
</tr>
</tbody>
</table>

(1) Capital expenditures includes payments for property and equipment and capitalized labor costs incurred in connection with certain software development activities.

(2) Free cash flow includes $150 million, $290 million, and $281 million, in cash interest payments for the period from April 4 to December 30, 2017, fiscal 2018, and fiscal 2019, respectively, and $133 million and $141 million in cash interest payments for the 26-week periods ended June 29, 2019 and June 27, 2020, respectively.
Overview

As a global leader and trusted brand in cybersecurity for over 30 years, McAfee protects millions of consumers and many of the world’s largest
government and enterprise clients with one of the industry’s most comprehensive cybersecurity portfolios. Our award-winning products offer individuals
and families protection for their digital lives. We meet the cyber security needs of consumers wherever they are, with solutions for device security,
privacy and safe WiFi, online protection, and identity protection, among others. Virtually anywhere consumers purchase connected devices or related
services, such as mobile or internet, McAfee is available. For enterprises and governments, we protect data and defend against threats from device to
cloud in complex, heterogeneous IT environments, supporting advanced cybersecurity infrastructures with threat insights gathered from over one billion
sensors across McAfee’s global footprint in multiple domains (device, network, gateway and cloud). Our mission is to protect all things that matter
through leading-edge cybersecurity.

Our consumer focused products protect over 600 million devices. Our Personal Protection Service provides holistic digital protection of the
individual and family wherever they go under our Total Protection and LiveSafe brands. We achieve this by integrating the following solutions and
capabilities within our Personal Protection Service:

- **Device Security**, which includes our Anti-Malware Software and Secure Home Platform products, keeps over 600 million consumer
devices, including mobile and home-use, protected from viruses, ransomware, malware, spyware, and phishing.

- **Online Privacy and Comprehensive Internet Security**, which includes our Safe Connect VPN, TunnelBear, and WebAdvisor products, help
make Wi-Fi connections safe with our bank-grade AES 256-bit encryption, keeping personal data protected while keeping IP addresses and
physical locations private.

- **Identity Protection**, which includes our Identity Theft Protection and Password Manager products, searches over 600,000 online black
markets for compromised personally identifiable information, helping consumers take action to prevent fraud.

Our go-to-market engine consists of a digitally-led omnichannel approach to reach the consumer at crucial moments in their purchase lifecycle
including direct to consumer online sales, acquisition through trial pre-loads on PC OEM devices, and other indirect modes via additional partners such
as mobile providers, ISPs, electronics retailers, ecommerce sites, and search providers. We have longstanding exclusive partnerships with many of the
leading PC OEMs and continue to expand our presence with mobile service providers and ISPs as the demand for mobile security protection increases. Through these relationships, our consumer security software is pre-installed on devices on either a trial basis until conversion to a paid subscription, which is enabled by a thoughtfully tailored renewal process that fits the customer’s journey, or through a live version that can be purchased directly through the OEMs’ website. Our consumer go-to-market channel also consists of partners including some of the largest electronics retailers and ISPs globally.

For enterprises and governments, we offer one of the industry’s broadest and deepest cybersecurity portfolios. MVISION Device, our next generation endpoint solutions offer comprehensive threat detection and data protection for both modern and legacy devices, such as traditional endpoints, mobile and fixed-function systems. Our MVISION cloud solutions protect data from device to cloud, prevent web-based and cloud-native threats, and help customers to accelerate their application delivery while improving governance, compliance and security. Our MVISION Security Services offers a suite of products aimed at data loss prevention, policy management orchestration, threat prevention, analytics and intelligence.

Our Enterprise products protect many of the largest governments and enterprises around the world. Some of our largest customers are government entities who represent over 25% of our top 250 Enterprise customers and 45% of our top 250 Enterprise customer annualized contract value as of June 27, 2020. Our Enterprise customers also included 86%, 78%, and 61% of Fortune 100, Fortune 500, and Global 2000 firms, respectively, as of June 27, 2020, of which 55%, 46%, and 28% were Core Enterprise Customers, respectively. See "Key Operating Metrics—Enterprise Segment—Core Enterprise Customers". Our internal sales teams work with our channel partners to position our solutions and secure a stronger foothold in customer accounts. Our key accounts are serviced directly by our field sales teams. These teams are focused on driving customer outcomes to increase the perceived value of our solutions and secure cross-sell and upsell opportunities from existing customers. Mid-market accounts are primarily serviced through a global inside sales engine.

Our Consumer and Enterprise net revenues are derived from the sale of software subscriptions, perpetual licenses, hardware, support and maintenance, professional services, royalty agreements or a combination of these items, primarily through our indirect relationships with our partners or direct relationships with end customers through our own sales force. We operate a global business with approximately 45% of our net revenues for the 26-week period ended June 27, 2020 earned outside of the United States. Our Consumer business had greater than 85% recurring revenues for the last three fiscal years and 88% recurring revenues during the 26-week period ended June 27, 2020. Our Enterprise business had greater than 75% recurring revenues for the last three fiscal years and 77% recurring revenues during the 26-week period ended June 27, 2020. We define recurring revenues as those derived from software subscriptions and support and maintenance net revenues, as a percentage of total net revenues. Recurring revenues exclude hardware sales, perpetual license sales, professional services, royalties, and any other revenues that are non-recurring in nature.

Our Operating Segments

We manage our business in two operating segments, Consumer and Enterprise. A significant portion of our operating segments’ operating expenses are allocated from shared resources based on the estimated utilization of services provided to or benefits received by the operating segments. See Note 6 to our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus.
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The table below summarizes our results of operations by segment for fiscal 2018 compared to fiscal 2019 and for the 26-week period ended June 29, 2019 and June 27, 2020. We believe adjusted EBITDA is useful in evaluating our business, but should not be considered in isolation or as a substitute for GAAP. See “Selected Consolidated and Combined Financial and Other Data—Non-GAAP Financial Measures” for explanations of how we calculate these measures and for reconciliation to the most directly comparable financial measure stated in accordance with GAAP.

<table>
<thead>
<tr>
<th></th>
<th>December 29, 2018</th>
<th>December 28, 2019</th>
<th>26-Week Period Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net revenue - Consumer</strong></td>
<td>$1,161</td>
<td>$1,303</td>
<td>$634</td>
</tr>
<tr>
<td><strong>Net revenue - Enterprise</strong></td>
<td>1,248</td>
<td>1,332</td>
<td>657</td>
</tr>
<tr>
<td><strong>Net revenue</strong></td>
<td>$2,409</td>
<td>$2,635</td>
<td>$1,291</td>
</tr>
<tr>
<td><strong>Operating income (loss) - Consumer</strong></td>
<td>$107</td>
<td>$277</td>
<td>$127</td>
</tr>
<tr>
<td><strong>Operating income (loss) - Enterprise</strong></td>
<td>-(280)</td>
<td>-(151)</td>
<td>-(92)</td>
</tr>
<tr>
<td><strong>Operating income (loss)</strong></td>
<td>$-(173)</td>
<td>$126</td>
<td>$35</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA - Consumer</strong></td>
<td>$431</td>
<td>$580</td>
<td>$279</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA - Enterprise</strong></td>
<td>109</td>
<td>219</td>
<td>94</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>$540</td>
<td>$799</td>
<td>$373</td>
</tr>
</tbody>
</table>

Net revenue for our Consumer segment has grown at a greater rate than net revenue for our Enterprise segment in recent periods and, after excluding the impact of purchase accounting adjustments required under GAAP, Enterprise net revenue declined in recent periods. See “Factors Affecting the Comparability of Our Results of Operations—Impact of Purchase Accounting Related to Mergers and Acquisitions.” As we continue to execute on the reorientation of our Enterprise business, we expect our Enterprise net revenue to continue to decline in the near term, and we expect the performance of our Consumer segment to continue to have a greater impact on our consolidated Company performance, including our consolidated net revenue.

Business Developments and Highlights

Since April 2017, when our Sponsors acquired a controlling interest in us, we have accelerated our transformational journey and achieved a number of business and financial objectives, including the following:

Operational Highlights:

- During the 2017 Successor period and fiscal 2018, we invested in several areas aimed at driving higher growth and improved efficiency in our product delivery and go-to-market strategies including the following:
  - we invested in additional headcount and outside resources in the PC OEM channel of our consumer business to increase new customer conversion for our consumer security software packages;
  - we invested in additional headcount, outside resources and other tools to increase consumer retention through enhanced online marketing and customer messaging during the renewal;
  - we initiated changes to our go-to-market model for our enterprise solutions; and
  - we implemented customer support initiatives to promote effective self-service solutions and improve support service efficiency.
- In fiscal 2019 and through the first half of fiscal 2020, we continued to innovate across our online presence, ecommerce, analytics and product platform to improve customer engagement, satisfaction and acquisition efficiency and retention.
During fiscal 2018 we launched MVISION, our cloud-native family of our enterprise platform.

Throughout the 2017 Successor period to the first half of fiscal 2020, we made multiple operational changes designed to increase efficiency and adapt to the changing marketplace, reducing overhead costs and reallocating resources to drive improved performance.

Acquisitions:

- In fiscal 2018, we completed the acquisitions of TunnelBear (an award-winning consumer VPN provider) and Skyhigh (a leading provider of CASB), as critical steps in adding what we believe are key competencies in high-growth verticals oriented around remote work within the cybersecurity market.

- In fiscal 2019, we acquired Uplevel Security (a graph theory based predictive security analytics platform) and Nanosec (a multi-cloud, zero-trust application and security platform), and in the first half of fiscal 2020, we acquired Light Point Security (an award-winning pioneer of browser isolation).

Key Factors Affecting Our Performance

**New customer acquisition and go-to-market strategy:**

- We maintain a diverse go-to-market strategy in our Consumer business and leverage strong partnerships across various channels. We have a vast consumer distribution network with multiple routes across direct to consumer online sales, PC-OEMs, retail and ecommerce, communications service providers, ISPs, and search providers, making our solutions available at multiple points of need. The combination of these partnerships and our direct-to-consumer digital marketing efforts give us multiple touch points to acquire new customers looking to meet their cyber security needs from a trusted brand.

- We also leverage our significant scale and breadth in enterprise offerings to create go-to-market advantages resulting in new customer wins. We market our brand, business solutions and offerings directly to enterprise and government customers through traditional demand generation programs and events, as well as indirectly through resellers and distributors. Our mid-market customers generally conduct their business through our channel partners.

If we are unable to obtain new customers and maintain our strategic channel partnerships, our financial condition and operating performance could be harmed.

**Customer retention and expansion:**

- Our Consumer business is primarily a subscription-based model with greater than 85% recurring revenues for the last three fiscal years and 88% recurring revenues during the 26-week period ended June 27, 2020. We derive more than 85% of our annual subscription recurring revenue on average from our Core Direct to Customers, which has benefited from our improvements in retention and direct-to-consumer channel marketing. Our ability to upsell drives expansion within our existing consumer customer base.

- Our Enterprise business is primarily a recurring revenue model with greater than 75% recurring revenues for the last three fiscal years and 77% recurring revenues during the 26-week period ended June 27, 2020. We derive approximately 80% of our total Enterprise net revenue from our existing customers with an annual contract value of greater than $100,000, which we refer to as our Core Enterprise Customers. We focus on this segment of our Enterprise customers to help improve retention of the customers driving the most significant portion of our Enterprise revenue, while also driving incremental cross-sell and upsell opportunities.
Our customers have no obligation to renew their contracts with us upon their expiration. Any decline in our ability to retain customers may harm our financial condition and operating performance.

**Product innovation:**

- We continue to invest organically in our consumer product platform and innovation in performance marketing to increase customer engagement. Most importantly, our research helps us better protect our customers. In addition to developing new offerings and solutions, our development staff focuses on performance marketing to increase customer conversion and customer retention.

- We also invest in research and development to support high growth markets in enterprise. This investment refines our security risk management processes, improves our product design and usability, and keeps us at the forefront of threat research. Future upgrades and updates may include additional functionality to respond to market needs, while also assuring compatibility with new systems and technologies.

**Market adoption of cloud solutions.** We believe our future success depends in part on the growth in the market for cloud-based security solutions. To ensure comprehensive threat protection, we believe organizations need to adopt cybersecurity solutions designed to secure the cloud while integrating seamlessly with endpoint and other security solutions. We have made significant investments in cloud-based products through product development and acquisitions, including our MVISION UCE and MVISION EDR, and expect the proportion of our revenue derived from these offerings to grow over time. The continued adoption of cloud-based solutions generally, and market acceptance of our cloud solutions in particular, will be key components of our ability to grow in the future.

**Acquisition strategy and integration.** As part of our growth strategy, we have made and expect to continue to make targeted acquisitions of, or investments in, complementary businesses, products and technologies. We intend to continue making targeted acquisitions and believe we are uniquely positioned to successfully execute on our acquisition strategy by leveraging our scale, global reach and routes to market, brand recognition, and data assets. Our ability to acquire complementary technologies for our portfolio and integrate these acquisitions into our business will be important to our success and may affect comparability of our results of operations from period to period.

**Key Operating Metrics**

We monitor the following key metrics to help us evaluate our business, identify trends affecting our business, measure our performance, formulate business plans, and make strategic decisions. We believe the following metrics are useful in evaluating our business, but should not be considered in isolation or as a substitute for GAAP. Certain judgments and estimates are inherent in our processes to calculate these metrics.

**Consumer Segment:**

Core Direct to Consumer Customers

We define Core Direct to Consumer Customers as active subscribers whose transaction for a subscription is directly with McAfee. These customers include those who (i) transact with us directly through McAfee web properties, (ii) are converted during or after the trial period of the McAfee product preinstalled on their new PC purchase, or (iii) are channel led subscribers who are converted to Core Direct to Consumer Customers after expiration of their subscription of our product initially purchased through our retail/ecommerce partners or who purchased a McAfee subscription from us through our retail or PC-OEM partners.

Core Direct to Consumer Customers account for more than 85% of our annual subscription revenue on average and may purchase one or more subscriptions from us. We believe this direct billing relationship is
important and our ability to increase the number of Core Direct to Consumer Customers is a key indicator of growth of our business. We expect the number of our Core Direct to Consumer Customers to continue to grow in the near term.

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of December 30, 2017</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
<th>As of June 29, 2019</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Core Direct to Consumer Customers</td>
<td>12.9</td>
<td>14.1</td>
<td>15.2</td>
<td>14.6</td>
<td>16.6</td>
</tr>
</tbody>
</table>

**Monthly Core Direct to Consumer Customers Average Revenue Per Customer (“ARPC”)**

We define ARPC as monthly subscription net revenue from transactions directly between McAfee and Core Direct to Consumer Customers, divided by average Core to Direct Consumer Customers from the same period. ARPC can be impacted by price, mix of products, and change between periods in Core Direct to Consumer Customer count. We believe that ARPC allows us to understand the value of our solutions to the portion of our customer base transacting directly with us.

<table>
<thead>
<tr>
<th></th>
<th>As of December 30, 2017</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
<th>As of June 29, 2019</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly ARPC</td>
<td>$5.55</td>
<td>$5.79</td>
<td>$5.96</td>
<td>$5.90</td>
<td>$6.02</td>
</tr>
</tbody>
</table>

**Trailing Twelve Months (“TTM”) Dollar Based Retention - Core Direct to Consumer Customers**

TTM Dollar Based Retention for Consumer is the annual contract value of Core Direct to Consumer Customer subscriptions that were renewed in the trailing twelve months divided by the annual contract value for Core Direct to Consumer Customers subscriptions that were up for renewal in the same period. We monitor TTM Dollar Based Retention for the Consumer segment as an important measure of the value we retain of our existing Core Direct to Consumer Customer base and as a measure of the effectiveness of the strategies we deploy to improve those rates over time.

<table>
<thead>
<tr>
<th></th>
<th>As of December 30, 2017</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
<th>As of June 29, 2019</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>TTM Dollar Based Retention - Core Direct to Consumer Customers</td>
<td>87%</td>
<td>93%</td>
<td>97%</td>
<td>95%</td>
<td>98%</td>
</tr>
</tbody>
</table>

**Enterprise Segment:**

**Core Enterprise Customers**

We define Core Enterprise Customers as any customer with an annualized contract value greater than $100,000, that has an active entitlement at any point during the last quarter of the period. For purposes of defining Core Enterprise Customers, annualized contract value excludes any customers who only purchased end of life products, which are products that have been discontinued after the relevant contract was entered.

These customers represent less than 5% of our total Enterprise customer base on average for the periods presented, but approximately 80% of our Enterprise net revenue on average for the same periods. On average, our Core Enterprise Customers had a tenure greater than 17 years as of June 27, 2020. These Core Enterprise Customers are a key focus of our Enterprise sales teams. While the number of our Core Enterprise Customers has declined slightly in recent periods as a result of refocusing our product portfolio, we expect the number of our Core Enterprise Customers to remain relatively stable in the near term, as we have continued to invest in enhancements to our Enterprise product portfolio.

<table>
<thead>
<tr>
<th></th>
<th>As of December 30, 2017</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
<th>As of June 29, 2019</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Core Enterprise Customers</td>
<td>1,585</td>
<td>1,589</td>
<td>1,564</td>
<td>1,563</td>
<td>1,542</td>
</tr>
</tbody>
</table>
Non-GAAP Financial Measures

We believe that in addition to our results determined in accordance with GAAP, billings, adjusted operating income, adjusted operating income margin, adjusted EBITDA, adjusted EBITDA margin, adjusted net income, adjusted net income margin, and free cash flow are useful in evaluating our business, results of operations and financial condition. We believe that this non-GAAP financial information may be helpful to investors because it provides consistency and comparability with past financial performance and facilitates period to period comparisons of operations, as these eliminate the effects of certain variables from period to period for reasons that we do not believe reflect our underlying business performance. However, non-GAAP financial information is presented for supplemental informational purposes only and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. Our presentation of these measures should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation. Other companies in our industry may calculate these measures differently, which may limit their usefulness as a comparative measure.

See “Selected Consolidated and Combined Financial and Other Data—Non-GAAP Financial Measures” for explanations of how we calculate these measures and for reconciliation to the most directly comparable financial measure stated in accordance with GAAP.

Total Company

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 28, 2018</th>
<th>Successor 26-Week Period Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$ 586</td>
<td>$ 1,490</td>
<td>$ 2,409</td>
<td>$ 2,635</td>
</tr>
<tr>
<td>Billings</td>
<td>589</td>
<td>1,932</td>
<td>2,717</td>
<td>2,820</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(73)</td>
<td>(406)</td>
<td>(173)</td>
<td>126</td>
</tr>
<tr>
<td>Operating income (loss) margin</td>
<td>(12.5)%</td>
<td>(27.2)%</td>
<td>(7.2)%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (79)</td>
<td>$ (607)</td>
<td>$ (512)</td>
<td>$ (236)</td>
</tr>
<tr>
<td>Net income (loss) margin</td>
<td>(13.5)%</td>
<td>(20.7)%</td>
<td>(21.3)%</td>
<td>(9.0)%</td>
</tr>
<tr>
<td>Adjusted operating income</td>
<td>$ 58</td>
<td>$ 123</td>
<td>$ 480</td>
<td>$ 733</td>
</tr>
<tr>
<td>Adjusted operating income margin</td>
<td>9.9%</td>
<td>8.3%</td>
<td>19.9%</td>
<td>27.8%</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ 76</td>
<td>$ 170</td>
<td>$ 540</td>
<td>$ 799</td>
</tr>
<tr>
<td>Adjusted EBITDA margin</td>
<td>13.0%</td>
<td>11.4%</td>
<td>22.4%</td>
<td>30.3%</td>
</tr>
<tr>
<td>Adjusted net income (loss)</td>
<td>$ 49</td>
<td>$ (105)</td>
<td>$ 143</td>
<td>$ 396</td>
</tr>
<tr>
<td>Adjusted net income (loss) margin</td>
<td>8.4%</td>
<td>(7.0)%</td>
<td>5.9%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>$ (65)</td>
<td>$ 316</td>
<td>$ 319</td>
<td>$ 496</td>
</tr>
<tr>
<td>Net cash provided by (used in) investing activities</td>
<td>(10)</td>
<td>(39)</td>
<td>(677)</td>
<td>(63)</td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>(23)</td>
<td>87</td>
<td>459</td>
<td>(734)</td>
</tr>
<tr>
<td>Free cash flow</td>
<td>(94)</td>
<td>277</td>
<td>257</td>
<td>435</td>
</tr>
</tbody>
</table>
## Consumer Segment

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended</th>
<th>Successor 26-Week Period Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue - Consumer</td>
<td>$258</td>
<td>$630</td>
<td>$1,161</td>
<td>$1,305</td>
</tr>
<tr>
<td>Billings - Consumer</td>
<td>285</td>
<td>831</td>
<td>$1,266</td>
<td>$1,393</td>
</tr>
<tr>
<td>Operating income (loss) - Consumer</td>
<td>$47</td>
<td>$(47)</td>
<td>$107</td>
<td>$277</td>
</tr>
<tr>
<td>Operating income (loss) margin - Consumer</td>
<td>18.2%</td>
<td>(7.5)%</td>
<td>9.2%</td>
<td>21.3%</td>
</tr>
<tr>
<td>Adjusted operating income - consumer</td>
<td>$85</td>
<td>$198</td>
<td>$408</td>
<td>$555</td>
</tr>
<tr>
<td>Adjusted operating income margin - Consumer</td>
<td>32.9%</td>
<td>31.4%</td>
<td>35.1%</td>
<td>42.6%</td>
</tr>
<tr>
<td>Adjusted EBITDA - Consumer</td>
<td>$89</td>
<td>$218</td>
<td>$431</td>
<td>$580</td>
</tr>
<tr>
<td>Adjusted EBITDA margin - Consumer</td>
<td>34.5%</td>
<td>34.6%</td>
<td>37.1%</td>
<td>44.5%</td>
</tr>
</tbody>
</table>

## Enterprise Segment

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended</th>
<th>Successor 26-Week Period Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue - Enterprise</td>
<td>$328</td>
<td>$860</td>
<td>$1,248</td>
<td>$1,332</td>
</tr>
<tr>
<td>Billings - Enterprise</td>
<td>304</td>
<td>1,161</td>
<td>1,451</td>
<td>1,427</td>
</tr>
<tr>
<td>Operating income (loss) - Enterprise</td>
<td>$(120)</td>
<td>$(359)</td>
<td>$(280)</td>
<td>$(151)</td>
</tr>
<tr>
<td>Operating income (loss) margin - Enterprise</td>
<td>(36.6)%</td>
<td>(41.7)%</td>
<td>(22.4)%</td>
<td>(11.3)%</td>
</tr>
<tr>
<td>Adjusted operating income (loss) - Enterprise</td>
<td>$(27)</td>
<td>$(75)</td>
<td>$72</td>
<td>$178</td>
</tr>
<tr>
<td>Adjusted operating income margin - Enterprise</td>
<td>(8.2)%</td>
<td>(8.7)%</td>
<td>5.8%</td>
<td>13.4%</td>
</tr>
<tr>
<td>Adjusted EBITDA - Enterprise</td>
<td>$(13)</td>
<td>$(48)</td>
<td>$109</td>
<td>$219</td>
</tr>
<tr>
<td>Adjusted EBITDA margin - Enterprise</td>
<td>(4.0)%</td>
<td>(5.6)%</td>
<td>8.7%</td>
<td>16.4%</td>
</tr>
</tbody>
</table>

## Billings

We define billings as net revenue recognized in accordance with GAAP plus the change in deferred revenue from the beginning to the end of the period, excluding the impact of deferred revenue assumed through acquisitions during the period. We view billings as a key metric, as it includes changes in our deferred revenue during the period, which is an important indicator of future trends and is a significant percentage of future revenue.

## Adjusted Operating Income, Adjusted Operating Income Margin, Adjusted EBITDA, and Adjusted EBITDA Margin

We regularly monitor adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin to assess our operating performance. We define adjusted operating income for the total Company as net income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense, interest expense and other, net, provision for income tax expense, foreign exchange (gain) loss, net, and other costs that we do not believe are reflective of our ongoing operations. We define adjusted operating income for our Consumer and Enterprise segments as segment operating income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense and other costs attributable to the segment that we do not believe are reflective of the segment’s ongoing operations. We present this reconciliation of adjusted operating income (loss) to operating income for Consumer and Enterprise.
segments because operating income (loss) is the primary measure of profitability used to assess segment performance, and is therefore the most directly comparable GAAP financial measure for our operating segments. Adjusted operating income margin is calculated as adjusted operating income divided by net revenue. We define adjusted EBITDA as adjusted operating income, excluding the impact of depreciation expense and other non-operating costs. Adjusted EBITDA margin is calculated as adjusted EBITDA divided by net revenue. We believe presenting adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin provides management and investors consistency and comparability with our past financial performance and facilitates period-to-period comparisons of operations, as it eliminates the effects of certain variations unrelated to our overall performance. Adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin have limitations as analytical tools, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted operating income and adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;
- adjusted operating income and adjusted EBITDA do not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our debt;
- adjusted operating income and adjusted EBITDA do not reflect income tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted operating income and adjusted EBITDA differently, which reduce their usefulness as comparative measures.

Because of these limitations, you should consider adjusted operating income and adjusted EBITDA alongside other financial performance measures, including operating income (loss), net income (loss) and our other GAAP results. In evaluating adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation of adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin. Adjusted operating income, adjusted operating income margin, adjusted EBITDA, and adjusted EBITDA margin are not presentations made in accordance with GAAP and the use of these terms vary from other companies in our industry.

**Adjusted Net Income and Adjusted Net Income Margin**

We regularly monitor adjusted net income, and adjusted net income margin to assess our operating performance. We define adjusted net income as net income (loss), excluding the impact of amortization of intangible assets, amortization of debt issuance costs, equity-based compensation expense, other costs, and certain non-recurring tax benefits and expenses that we do not believe to be reflective of our ongoing operations and the tax impact of these adjustments. Adjusted net income margin is calculated as adjusted net income divided by net revenue. Adjusted net income and adjusted net income margin have limitations as analytical tools, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although amortization is non-cash charge, the assets being amortized may have to be replaced in the future, and adjusted net income does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
• adjusted net income does not reflect changes in, or cash requirements for, our working capital needs;
• other companies, including companies in our industry, may calculate adjusted net income differently, which reduce its usefulness as comparative measures.

Because of these limitations, you should consider adjusted net income alongside other financial performance measures, including net income (loss) and our other GAAP results. In evaluating adjusted net income and adjusted net income margin, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of adjusted net income and adjusted net income margin should not be construed as an inference that our future results will be unaffected by the types of items excluded from the calculation of adjusted net income and adjusted net income margin. Adjusted net income and adjusted net income margin are not presentations made in accordance with GAAP and the use of these terms vary from other companies in our industry.

**Free Cash Flow**

We define free cash flow as net cash provided by operating activities less capital expenditures. We consider free cash flow to be a liquidity measure that provides useful information to management and investors about the amount of cash generated by the business that can be used for strategic opportunities, including investing in our business, making strategic acquisitions, and strengthening the balance sheet.

**Factors Affecting the Comparability of Our Results of Operations**

As a result of a number of factors, our historical results of operations are not comparable from period to period and may not be comparable to our financial results of operations in future periods. Set forth below is a brief discussion of the key factors impacting the comparability of our results of operations.

**Basis of Presentation**

Prior to the Sponsor Acquisition, our business operated as a part of a business unit of Intel. The period ended April 3, 2017 is referred to as the “Predecessor” period and all periods after such date are referred to as the “Successor” period. Our combined financial statements for the Predecessor period were “carved-out” from Intel’s consolidated financial statements. Our consolidated financial statements for the Successor period are presented on a stand-alone basis. Accordingly, the combined financial statements for the Predecessor period may not be comparable to the consolidated financial statements of the Successor period.

Subsequent to the Sponsor Acquisition, we implemented various transformation and restructuring activities to improve cost synergies, customer retention, and activation to pay strategies. These activities changed our operations and structure, impacting the comparability of our operating results.

**Impact of Adoption of ASC Topic 606**

On December 31, 2017, we adopted ASC Topic 606, using the modified retrospective method, applied to those contracts which were not completed as of the adoption date. Results for the reporting periods beginning December 31, 2017 and subsequent are presented under ASC Topic 606, while prior period amounts are not adjusted and continue to be reported under ASC Topic 605. Under ASC Topic 606, certain of our perpetual software licenses or hardware with integrated software are not distinct from their accompanying maintenance and support, as they are dependent upon regular threat updates. These contracts typically contain a renewal option that we have concluded creates a material right for our customer. The license, hardware, maintenance and support revenue is recognized over time, as control is transferred to the customer over the term of the initial contract period while the corresponding material right performance is recognized over time beginning at the end of the initial contractual period over the remainder of the technology constrained customer life. This generally results in
a portion of the consideration received being deferred and recognized over the longer of the technology constrained customer life or the contract term. Additionally, certain related contract costs are now amortized over the technology constrained customer life. See the Comparison of the 2017 Predecessor and 2017 Successor periods and Fiscal 2018 for further discussion of impact.

**Change in Allocation of Costs to Segments**

Prior to fiscal 2018, we allocated shared expenses of our administrative functions, including finance, accounting, human resources, legal, operations, information technology and facilities to our reportable segments using a head count ratio of directly attributable employees. Effective fiscal 2018, the allocation metrics were changed to be based on direct identification for segment specific sites and analysis for each shared function using drivers, including surveyed time, head count or revenue mix from each segment. Based on our best estimate, the change in allocation would have resulted in $39 million higher costs allocated to the Consumer segment and $39 million lower costs allocated to the Enterprise segment for the 2017 Successor period. This change in the allocation of expenses caused a one-time decrease in the rate of growth of our Consumer operating income and Consumer operating income margin in fiscal 2018 compared to the 2017 Successor period; however, this change had, and will continue to have, no effect on the comparability of subsequent periods.

**Payments to Channel Partners**

We make various payments to our channel partners, which may include revenue share, product placement fees and marketing development funds. Costs that are incremental to revenue, such as revenue share, are capitalized and amortized over time as cost of sales. This classification is an accounting policy election, which may make comparisons to other companies difficult. Product placement fees and marketing development funds are expensed in sales and marketing expense as the related benefit is received. Many of our channel partner agreements contain a clause whereby we pay the greater of revenue share calculated for the period or product placement fees. This may impact the comparability of our financial results between periods.

Under certain of our channel partner agreements, the partners pay us a royalty on our technology sold to their customers, which we recognize as revenue in accordance with our revenue recognition policy. In certain situations, the payments made to our channel partners are recognized as consideration paid to a customer, and thus are recorded as reductions to revenue up to the amount of cumulative revenue recognized from contracts with the channel partner during the period of measurement. Any payments to channel partners in excess of such cumulative revenue during the period of measurement are recognized as cost of sales or marketing expense as described above. As royalty revenue from individual partners varies, the amount of costs recognized as a reduction of revenue rather than as cost of sales or marketing expense fluctuates and may impact the comparability of our financial statements between periods.

**Impact of Purchase Accounting Related to Mergers and Acquisitions**

Through April 3, 2017, the McAfee cybersecurity business, which we refer to as the Predecessor Business, was operated as a part of a business unit of Intel. Also prior to April 3, 2017, McAfee, Inc., which was then a wholly-owned subsidiary of Intel, was converted into a limited liability company, McAfee, LLC. Following such conversion, Intel contributed McAfee, LLC to Foundation Technology Worldwide LLC, a wholly-owned subsidiary of Intel. On April 3, 2017, Intel and its subsidiaries transferred assets and liabilities not already held through Foundation Technology Worldwide LLC to Foundation Technology Worldwide LLC. Immediately thereafter on April 3, 2017, our Sponsors and certain of their co-investors acquired a majority stake in Foundation Technology Worldwide LLC, pursuant to the Sponsor Acquisition. Following the Sponsor Acquisition, our Sponsors and certain of their co-investors owned 51.0% of the common equity interests in Foundation Technology Worldwide LLC, with Intel and certain of its affiliates retaining the remaining 49.0% of the common equity interests. We have operated as a standalone company at all times following the Sponsor Acquisition. As a result of the Sponsor Acquisition, we recorded all assets and liabilities at
their fair value, including our deferred revenue and deferred costs balances, as of the effective date of the Sponsor Acquisition, which in some cases was different than the historical book values. Adjusting our deferred revenue and deferred costs balances to fair value on the date of the Sponsor Acquisition had the effect of reducing revenue and expenses from that which would have otherwise been recognized in subsequent periods. We also recorded identifiable intangible assets that are amortized over their useful lives, increasing expenses from that which would otherwise have been recognized.

In addition, we have made acquisitions and recorded the acquired assets and liabilities at fair value on the date of acquisition, which similarly impacted deferred revenue and deferred costs balances and reduced revenue and expenses from that which would have otherwise been recognized in subsequent periods.

We also recorded identifiable intangible assets that are amortized over their useful lives, increasing expenses from that which would otherwise have been recognized.
The accounting impact resulting from these acquisitions limits the comparability of our financial statements between periods. The table below shows the impact of purchase accounting on our financial statements.

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
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<tr>
<td></td>
<td>Period from</td>
<td>Period from</td>
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<td>26 Week Period Ended</td>
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<td></td>
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<td>April 4 to December 30,</td>
<td>Year Ended</td>
<td>Ended</td>
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<td>Purchase accounting adjustments to deferred revenue—Enterprise</td>
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<td>213</td>
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<tr>
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<tr>
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<td>(2)</td>
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<tr>
<td>Amortization of acquired and developed technologies—Consumer</td>
<td>—</td>
<td>79</td>
<td>107</td>
<td>107</td>
</tr>
<tr>
<td>Amortization of acquired and developed technologies—Enterprise</td>
<td>1</td>
<td>93</td>
<td>145</td>
<td>139</td>
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<tr>
<td>Impact of purchase accounting on cost of sales</td>
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<td>$ 266</td>
<td>$ 266</td>
<td>$ 247</td>
</tr>
<tr>
<td>Purchase accounting adjustments to operating expenses—Consumer</td>
<td>$ —</td>
<td>$ 2</td>
<td>$ 1</td>
<td>$ 1</td>
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<tr>
<td>Purchase accounting adjustments to operating expenses—Enterprise</td>
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<tr>
<td>Amortization of customer relationships and other—Consumer</td>
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<td>114</td>
<td>153</td>
<td>146</td>
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<tr>
<td>Amortization of customer relationships and other—Enterprise</td>
<td>25</td>
<td>53</td>
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<tr>
<td>Impact of purchase accounting on operating expenses</td>
<td>$ 40</td>
<td>$ 200</td>
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<td>$ 229</td>
</tr>
</tbody>
</table>

**Impact of the Reorganization Transactions**

McAfee Corp. is a corporation for U.S. federal and state income tax purposes. Following the Reorganization Transactions, Foundation Technology Worldwide LLC will be the predecessor of McAfee Corp. for accounting purposes. Foundation Technology Worldwide LLC is and is expected to remain a partnership for U.S. federal income tax purposes and will therefore generally not be subject to any U.S. federal income taxes at the entity level in respect of income it recognizes directly or through its U.S. and foreign subsidiaries that are also pass-
through or disregarded entities for U.S. federal income tax purposes. Instead, taxable income and loss of these entities will flow through to the members of Foundation Technology Worldwide LLC’s non-U.S. subsidiaries that are treated as pass-through or disregarded entities for U.S. federal income tax purposes are nonetheless treated as taxable entities in their respective jurisdictions and are thus subject to non-U.S. taxes at the entity level. Foundation Technology Worldwide LLC also has certain U.S. and foreign subsidiaries that are treated as corporations for U.S. federal income tax purposes and that therefore are or may be subject to income tax at the entity level. Following this offering and the Reorganization Transactions, McAfee Corp. will pay U.S. federal, state and local income taxes as a corporation on its share of the taxable income of Foundation Technology Worldwide LLC (taking into account the direct and indirect ownership of Foundation Technology Worldwide LLC by McAfee Corp.).

The Reorganization Transactions will be accounted for as a reorganization of entities under common control. As a result, following the Reorganization Transactions, the consolidated financial statements of McAfee Corp. will recognize the assets and liabilities received in the Reorganization Transactions at their historical carrying amounts, as reflected in the historical consolidated financial statements of Foundation Technology Worldwide LLC, the accounting predecessor.

In addition, in connection with the Reorganization Transactions and this offering, we will enter into the tax receivable agreement as described under “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Tax Receivable Agreement.”

Composition of Revenues, Expenses, and Cash Flows

Net Revenue

We derive substantially all of our revenue from the sale of software subscriptions, including both on-premises and those hosted in the cloud, support and maintenance, perpetual licenses and hardware, professional services, royalty agreements or a combination of these items, primarily through our indirect relationships with our partners or direct relationships with end customers through our own sales force and website. We have various marketing programs with certain business partners who we consider customers and reduce revenue by the cash consideration given to these partners.

As discussed further in “—Critical Accounting Policies and Use of Estimates—Revenue Recognition” below, revenue is recognized as control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for the promised goods or services. Prior to December 31, 2017, we recognized revenue under ASC Topic 605, when all of the following criteria were met: (1) Persuasive evidence of an arrangement exists, (2) delivery has occurred, (3) fee is fixed or determinable and (4) collectability is probable. On December 31, 2017, we began recognizing revenue under ASC Topic 606.

Certain of our perpetual software licenses or hardware with integrated software are not distinct from their accompanying maintenance and support, as they are dependent upon regular threat updates. Revenue for these products is recognized over time as control is transferred to the customer. These contracts typically contain a renewal option that we have concluded creates a material right for our customer. The license, and the corresponding material right performance obligation, are recognized over time, as control is transferred to the customer over the term of the technology constrained customer life.

Additionally, certain of our perpetual software licenses, hardware appliances, or hardware with integrated software provide a benefit to the customer that is separable from the related support as they are not dependent upon regular threat updates. Revenue for these products is recognized at a point in time when control is transferred to our customers, generally at shipment. The related maintenance and support represent a separate
performance obligation and the associated transaction price allocated to it is recognized over time as control is transferred to the customer. The nature of our promise to the customer to provide our subscriptions and time-based software licenses and related support and maintenance is to stand ready to provide protection for a specified or indefinite period of time.

The nature of our promise to the customer to provide our subscriptions and time-based software licenses and related support and maintenance is to stand ready to provide protection for a specified or indefinite period of time. Maintenance and support in these cases are typically not distinct performance obligations as the licenses are dependent upon regular threat updates to the customer. Instead the maintenance and support is combined with a software license to create a single performance obligation. We typically satisfy these performance obligations over time, as control is transferred to the customer as the services are provided.

Revenue for professional services that are a separate and distinct performance obligations is recognized as services are provided to the customer.

Cost of Sales
Our total cost of sales include the costs of providing delivery (i.e., hosting), support, training, and consulting services, which include salaries and benefits for employees and fees related to third parties and professional service subcontractors. These costs also include fees paid under revenue share arrangements, royalties paid to our strategic channel partners, amortization of certain intangibles, the cost of computer platforms, other hardware and embedded third-party components, and technologies for our hardware-based security products. We anticipate our total cost of sales to increase in absolute dollars as we grow our net revenue. Cost of sales as a percentage of net revenue may vary from period to period based on our investments in the business and the efficiencies we are able to realize going forward.

Operating Expenses
Our operating expenses consist of sales and marketing, research and development, general and administrative, amortization of intangibles, and restructuring and transition charges.

- **Sales and Marketing.** Sales and marketing expenses consist primarily of salaries, commissions and benefits and costs associated with travel for sales and marketing personnel, advertising and marketing promotions as well as allocated facilities and IT costs. See further discussion of accounting for commissions within “—Critical Accounting Policies and Use of Estimates—Revenue Recognition” below.

- **Research and Development.** Research and development expenses consist primarily of salaries and benefits for our development staff and a portion of our technical support staff, contractors’ fees, and other costs associated with the enhancement of existing products and services and development of new products and services, as well as allocated facilities and IT costs.

- **General and Administrative.** General and administrative expenses consist primarily of salaries and benefits and other expenses for our executive, finance, human resources, and legal organizations. In addition, general and administrative expenses include outside legal, accounting, and other professional fees, and an allocated portion of facilities and IT costs. Following the completion of this offering, we expect to incur additional expenses as a result of operating as a public company.

- **Amortization of Intangibles.** Amortization of intangibles includes the amortization of customer relationships and other assets associated with our acquisitions, including the Sponsor Acquisition in April 2017.

- **Restructuring and Transition Charges.** Restructuring and transition charges consists primarily of costs associated with employee severance and facility restructuring charges related to realignment of our workforce as well as certain costs to separate from Intel following our Sponsor acquisition.
**Interest Expense and Other, Net**

Interest expense and other, net primarily relates to interest expense on our outstanding indebtedness to third parties or members.

**Foreign Exchange Gain (Loss), Net**

Foreign exchange gain (loss), net is primarily attributable to realized and unrealized gains or losses on non-U.S. Dollar denominated balances, primarily long-term debt and cash, and transactions.

**Provision for Income Tax**

The provision for income taxes primarily reflects current and deferred state taxes and foreign income taxes in taxable foreign jurisdictions. We have recorded a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized in future periods. We consider many factors when evaluating and estimating our tax positions, which may require periodic adjustments and may not accurately anticipate actual outcomes.

**Results of Operations**

Subsequent to the Sponsor Acquisition, we implemented various transformation and restructuring activities to improve cost synergies, customer retention, and activation to pay strategies. These activities changed our operations and structure therefore impacting the comparability of our operating results.

We adopted Accounting Standards Codification, or ASC Topic 606, *Revenue from Contracts with Customers*, or ASC Topic 606, on December 31, 2017, using the modified retrospective transition method. Under this method, results for reporting periods beginning on December 31, 2017 are presented in accordance with ASC Topic 606, while prior period amounts are not adjusted and continue to be reported in accordance with our historical accounting under ASC Topic 605, *Revenue Recognition*.

We maintain a 52- or 53-week fiscal year that ends on the last Saturday in December. Period ended April 3, 2017 is a 13-week period starting on January 1, 2017. Period ended December 30, 2017 is a 39-week fiscal period starting on April 4, 2017. Fiscal 2018 is a 52-week year starting on December 31, 2017 and ending on December 29, 2018. Fiscal 2019 is a 52-week year starting on December 30, 2018 and ending on December 28, 2019. 26-week period ended June 29, 2019 is a 26-week period starting on December 29, 2018 and ending on June 29, 2019. 26-week period ended June 27, 2020 is a 26-week period starting on December 29, 2019 and ending on June 27, 2020.
## Table of Contents

The following tables set forth the consolidated statements of operations in dollar amounts and as of a percentage of net revenue for the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>586</td>
<td>$1,490</td>
<td>$2,409</td>
<td>$2,635</td>
<td>$1,291</td>
<td>$1,401</td>
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<td>Cost of sales</td>
<td>163</td>
<td>542</td>
<td>840</td>
<td>843</td>
<td>429</td>
<td>410</td>
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<td>Gross profit</td>
<td>423</td>
<td>948</td>
<td>1,569</td>
<td>1,792</td>
<td>862</td>
<td>991</td>
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<td>Operating expenses:</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Sales and marketing</td>
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<td>348</td>
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<td>406</td>
<td>380</td>
<td>193</td>
<td>186</td>
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<td>General and administrative</td>
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<td>157</td>
<td>253</td>
<td>272</td>
<td>123</td>
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<td>Amortization of intangibles</td>
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<td>167</td>
<td>232</td>
<td>222</td>
<td>113</td>
<td>110</td>
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<tr>
<td>Restructuring and transition charges</td>
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<td>123</td>
<td>36</td>
<td>22</td>
<td>15</td>
<td>9</td>
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<tr>
<td>Total operating expenses</td>
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<td>1,742</td>
<td>1,666</td>
<td>827</td>
<td>791</td>
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<tr>
<td>Operating income (loss)</td>
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<td>(406)</td>
<td>(173)</td>
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<td>35</td>
<td>200</td>
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<td>Interest expense and other, net</td>
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<td>(307)</td>
<td>(295)</td>
<td>(143)</td>
<td>(150)</td>
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<td>(6)</td>
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<tr>
<td>Income (loss) before income taxes</td>
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<tr>
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<td>87</td>
<td>39</td>
<td>13</td>
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<td>$(607)</td>
<td>$(512)</td>
<td>$(236)</td>
<td>$(146)</td>
<td>$31</td>
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<table>
<thead>
<tr>
<th>Results of Operations, as a percentage of net revenue</th>
<th>Predecessor</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor December 28, 2019</th>
<th>Successor 26-Week Period Ended June 29, 2020</th>
<th>Successor June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
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<tr>
<td>Cost of sales</td>
<td>27.8%</td>
<td>36.4%</td>
<td>34.9%</td>
<td>32.0%</td>
<td>33.2%</td>
<td>29.3%</td>
</tr>
<tr>
<td>Gross profit</td>
<td>72.2%</td>
<td>63.6%</td>
<td>65.1%</td>
<td>68.0%</td>
<td>66.8%</td>
<td>70.7%</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>36.2%</td>
<td>39.2%</td>
<td>33.8%</td>
<td>29.2%</td>
<td>29.7%</td>
<td>24.8%</td>
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<tr>
<td>Research and development</td>
<td>21.7%</td>
<td>21.7%</td>
<td>16.9%</td>
<td>14.4%</td>
<td>14.9%</td>
<td>13.3%</td>
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<tr>
<td>General and administrative</td>
<td>8.7%</td>
<td>10.5%</td>
<td>10.5%</td>
<td>10.3%</td>
<td>9.5%</td>
<td>9.9%</td>
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<tr>
<td>Amortization of intangibles</td>
<td>6.8%</td>
<td>11.2%</td>
<td>9.6%</td>
<td>8.4%</td>
<td>8.8%</td>
<td>7.9%</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>11.3%</td>
<td>8.3%</td>
<td>1.5%</td>
<td>0.8%</td>
<td>1.2%</td>
<td>0.6%</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>84.6%</td>
<td>90.9%</td>
<td>72.3%</td>
<td>63.2%</td>
<td>64.1%</td>
<td>56.5%</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(12.5%)</td>
<td>(27.2%)</td>
<td>(7.2%)</td>
<td>4.8%</td>
<td>2.7%</td>
<td>14.3%</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(0.2%)</td>
<td>(10.7%)</td>
<td>(12.7%)</td>
<td>(11.2%)</td>
<td>(11.1%)</td>
<td>(10.7%)</td>
</tr>
<tr>
<td>Foreign exchange gain (loss), net</td>
<td>0.5%</td>
<td>(0.6%)</td>
<td>1.2%</td>
<td>0.8%</td>
<td>0.1%</td>
<td>(0.4%)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>(12.1%)</td>
<td>(38.5%)</td>
<td>(18.7%)</td>
<td>(5.7%)</td>
<td>(8.3%)</td>
<td>3.1%</td>
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<tr>
<td>Provision for income tax expense</td>
<td>1.4%</td>
<td>2.2%</td>
<td>2.6%</td>
<td>3.3%</td>
<td>3.0%</td>
<td>0.9%</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>(13.5%)</td>
<td>(40.7%)</td>
<td>(21.3%)</td>
<td>(9.0%)</td>
<td>(11.3%)</td>
<td>2.2%</td>
</tr>
</tbody>
</table>
**Comparison of the 26-Week Periods Ended June 29, 2019 and June 27, 2020**

### Net Revenue

<table>
<thead>
<tr>
<th></th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$1,291</td>
<td>$1,401</td>
</tr>
</tbody>
</table>

Net revenue increased $110 million, or 8.5%, from $1,291 million for the 26-week period ended June 29, 2019 to $1,401 million for the 26-week period ended June 27, 2020. The increase in net revenue was primarily attributable to a $103 million increase in consumer revenue primarily driven by a combination of (i) increases in ARPC, (ii) higher Core Direct to Consumer Customer subscriber base from prior year, combined with increases in TTM Dollar Based Retention - Core Direct to Consumer Customers, (iii) increased new subscribers from improvements in customer acquisition across channels combined with higher demand due to the accelerated shift to working from home as a result of the COVID-19 pandemic, and (iv) with additional contributions from growth in Mobile & Internet Service Provider channel including sales of TunnelBear.

### Cost of Sales

<table>
<thead>
<tr>
<th></th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Cost of sales</td>
<td>$429</td>
<td>$410</td>
</tr>
<tr>
<td>Gross profit margin</td>
<td>66.8%</td>
<td>70.7%</td>
</tr>
</tbody>
</table>

Cost of sales decreased $19 million, or 4.4%, from $429 million for the 26-week period ended June 29, 2019 to $410 million for the 26-week period ended June 27, 2020. The decrease in cost of sales was primarily attributable to (i) a $12 million decrease in amortization expense resulting from certain assets recorded at the Sponsor Acquisition becoming fully amortized and (ii) a $13 million decrease in employee expenses and travel driven primarily by lower headcount and product cost of sales largely due to decreased hardware sales. These decreases were partially offset by a $9 million increase in revenue share expense resulting from increases in consumer billings and retention.

### Operating Expenses

<table>
<thead>
<tr>
<th></th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$383</td>
<td>$348</td>
</tr>
<tr>
<td>Research and development</td>
<td>193</td>
<td>186</td>
</tr>
<tr>
<td>General and administrative</td>
<td>123</td>
<td>138</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>113</td>
<td>110</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>$827</td>
<td>$791</td>
</tr>
</tbody>
</table>

**Sales and Marketing**

Sales and marketing expense decreased $35 million, or 9.1%, from $383 million for the 26-week period ended June 29, 2019 to $348 million for the 26-week period ended June 27, 2020. The decrease in sales and marketing expense was primarily attributable to (i) a $20 million decrease in employee expenses primarily due to a decrease in headcount as a result of our strategic initiatives, (ii) a $15 million decrease in external consulting costs related to strategic initiatives in 2019, and (iii) a $10 million decrease in travel expenses due to the COVID-19 pandemic and reduction in headcount. The decreases were partially offset by a $14 million increase in product placement fees and marketing development funds under agreements with certain OEM partners, primarily driven by increased PC shipments.
Research and Development

Research and development expense decreased $7 million, or 3.6%, from $193 million for the 26-week period ended June 29, 2019 to $186 million for the 26-week period ended June 27, 2020. The decrease in research and development expense was primarily attributable to a $6 million decrease in compensation related to cash in lieu of equity awards as these awards are not replaced as they vest as well as a decrease in equity based compensation due to deferred equity awards relating to one of our acquisitions becoming fully vested in January 2020.

General and Administrative

General and administrative expense increased $15 million, or 12.2%, from $123 million for the 26-week period ended June 29, 2019 to $138 million for the 26-week period ended June 27, 2020. The increase in general and administrative expense was primarily attributable to a $12 million increase in equity based compensation due to acceleration of vesting related to the departure of our former CEO.

Amortization of Intangibles

Amortization of intangibles decreased $3 million, or 2.7%, from $113 million for the 26-week period ended June 29, 2019 to $110 million for the 26-week period ended June 27, 2020. The decrease was the result of certain assets recorded at the Sponsor Acquisition that have since fully amortized.

Restructuring and Transition Charges

Restructuring and transition charges decreased $6 million, or 40.0%, from $15 million for the 26-week period ended June 29, 2019 to $9 million for the 26-week period ended June 27, 2020. The decrease in restructuring and transition charges was primarily attributable to a $6 million decrease in employee severance and benefits as a result of the winding down of a transformation-related headcount reduction initiatives in 2020 compared to 2019.

Operating Income

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Operating income</td>
<td>$35</td>
<td>$200</td>
</tr>
<tr>
<td>Operating income margin</td>
<td>2.7%</td>
<td>14.3%</td>
</tr>
</tbody>
</table>

Operating income increased $165 million, from $35 million for the 26-week period ended June 29, 2019 to $200 million for the 26-week period ended June 27, 2020. The increase in operating income was primarily attributable to the reasons noted above.

Interest Expense and Other, Net

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>$ (143)</td>
<td>$ (150)</td>
</tr>
</tbody>
</table>

Interest expense and other, net increased $7 million, or 4.9%, from $143 million for the 26-week period ended June 29, 2019 to $150 million for the 26-week period ended June 27, 2020. The increase in interest expense and other, net was primarily attributable to the incremental borrowing issued under our 1st Lien credit facility in June 2019 in addition to the March 2020 borrowing under our revolving credit facility, partially offset by a decrease in LIBOR.
Provison for Income Tax Expense

<table>
<thead>
<tr>
<th>Provision for income tax expense</th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Provision for income tax expense</td>
<td>$39</td>
<td>$13</td>
</tr>
</tbody>
</table>

Provision for income tax expense decreased $26 million, or 66.7%, from $39 million for the 26-week period ended June 29, 2019 to $13 million for the 26-week period ended June 27, 2020. The decrease in provision for income tax expense was primarily attributable to (i) a $12 million decrease in reserve for uncertain tax positions due to an election to treat one of our subsidiary entities as a corporation for U.S federal income tax purposes and (ii) an $8 million decrease due to outside basis differences.

Segment Operating Results

Consumer

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$634</td>
<td>$737</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>140</td>
<td>136</td>
</tr>
<tr>
<td>Operating income</td>
<td>127</td>
<td>201</td>
</tr>
<tr>
<td>Operating income margin</td>
<td>20.0%</td>
<td>27.3%</td>
</tr>
</tbody>
</table>

Net revenue increased $103 million, or 16.2%, from $634 million for the 26-week period ended June 29, 2019 to $737 million for the 26-week period ended June 27, 2020. The increase in net revenue was primarily driven by a combination of (i) increases in ARPC, (ii) higher Core Direct to Consumer Customer subscriber base from prior year, combined with increases in TTM Dollar Based Retention - Core Direct to Consumer Customers, (iii) increased new subscribers from improvements in customer acquisition across channels combined with higher demand due to the accelerated shift to working from home as a result of the COVID-19 pandemic, and (iv) with additional contributions from growth in Mobile & Internet Service Provider channel including sales of TunnelBear.

Depreciation and amortization decreased $4 million, or 2.9%, from the 26-week period ended June 29, 2019 to the 26-week period ended June 27, 2020. The decrease is largely the result of certain assets recorded at the Sponsor Acquisition that have since fully amortized.

Operating income increased $74 million, or 58.3%, from $127 million for the 26-week period ended June 29, 2019 to $201 million for the 26-week period ended June 27, 2020. The increase in operating income was primarily attributable to (i) the consumer revenue increase discussed above and (ii) a $9 million decrease in external consulting costs related to strategic initiatives in 2019. These costs were partially offset by (i) a $14 million increase in product placement fees and marketing development funds under agreements with certain OEM partners primarily driven by increased PC shipments, (ii) an $8 million increase in general and administrative expense segment allocation consistent with the growth in consumer revenue, and (iii) a $9 million increase in revenue share expense resulting from increases in consumer billings and retention.

Enterprise

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>26-Week Period Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$657</td>
<td>$664</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>129</td>
<td>116</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(92)</td>
<td>(1)</td>
</tr>
<tr>
<td>Operating loss margin</td>
<td>(14.0)%</td>
<td>(0.2)%</td>
</tr>
</tbody>
</table>
Net revenue increased $7 million, or 1.1%, from $657 million for the 26-week period ended June 29, 2019 to $664 million for the 26-week period ended June 27, 2020. The increase in net revenue was primarily attributable to a $23 million increase due to a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition compared to prior period, partially offset by a $15 million decrease in enterprise revenue due to lower year on year billings over the prior 12 months.

Depreciation and amortization decreased $13 million or 10.1%, for the 26-week period ended June 29, 2019 and the 26-week period ended June 27, 2020. The decrease is largely the result of certain assets recorded at the Sponsor Acquisition that have since fully amortized.

Operating loss improved $91 million or 98.9%, from $92 million for the 26-week period ended June 29, 2019 to $1 million for the 26-week period ended June 27, 2020. The improvement in operating loss was primarily attributable to (i) the enterprise revenue increase discussed above, (ii) a $26 million decrease in sales and marketing costs due to lower headcount as a result of strategic and transformational initiatives in addition to decreased travel expenses related to the COVID-19 pandemic, (iii) a $19 million decrease in cost of sales primarily driven by lower hardware sales and a decrease in employee costs and travel due to lower headcount, (iv) the $13 million decrease in depreciation and amortization discussed above and (v) other decreases in expenses.

Comparison of Fiscal 2018 and 2019

**Net Revenue**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
<th>Dollars</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td>$226</td>
<td>9.4%</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$2,409</td>
<td>$2,635</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Net revenue increased $226 million, or 9.4%, from $2,409 million for fiscal 2018 to $2,635 million for fiscal 2019. The increase in net revenue was primarily attributable to (i) a $127 million increase in consumer revenue consistent with growth in consumer billings primarily driven by growth in the Core Direct to Consumer Customer subscriber base, increases in TTM Dollar Based Retention – Core Direct to Consumer Customers, increases in ARPC, and growth in Mobile & Internet Service Provider channel which is inclusive of the sales of TunnelBear, and (ii) a $109 million increase due to a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition compared to prior period.

**Cost of Sales**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
<th>Dollars</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of sales</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td>$3</td>
<td>0.4%</td>
</tr>
<tr>
<td>Gross profit margin</td>
<td>$840</td>
<td>$843</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Cost of sales increased $3 million, or 0.4%, from $840 million for fiscal 2018 to $843 million for fiscal 2019. The increase in cost of sales was primarily attributable to a $12 million increase in revenue share expense due to fair value adjustments to deferred revenue share in connection with purchase accounting primarily relating to the Sponsor Acquisition, partially offset by a $6 million decrease in amortization of technology assets as certain assets recorded at the Sponsor Acquisition that have since fully amortized.
### Table of Contents

**Operating Expenses**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Successor Fiscal Year Ended</th>
<th>Variance in Dollars</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$815</td>
<td>$770</td>
<td>$(45)</td>
</tr>
<tr>
<td>Research and development</td>
<td>406</td>
<td>380</td>
<td>(26)</td>
</tr>
<tr>
<td>General and administrative</td>
<td>253</td>
<td>272</td>
<td>19</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>232</td>
<td>222</td>
<td>(10)</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>36</td>
<td>22</td>
<td>(14)</td>
</tr>
<tr>
<td>Total</td>
<td>$1,742</td>
<td>$1,666</td>
<td>$(76)</td>
</tr>
</tbody>
</table>

**Sales and Marketing**

Sales and marketing expense decreased $45 million, or 5.5%, from $815 million for fiscal 2018 to $770 million for fiscal 2019. The decrease in sales and marketing expense was primarily attributable to (i) a $33 million decrease in salaries and related expenses primarily due to a decrease in headcount as a result of our strategic initiatives and (ii) a $28 million decrease in product placement fees and marketing development funds under agreements with certain OEM partners primarily driven by lower PC shipments, changes in sales mix to models with lower shipment cost per unit, as well as an increase in the amount recorded as a reduction to revenue as consideration paid to a customer. The offsetting $16 million increase is due to a combination of other immaterial items.

**Research and Development**

Research and development expense decreased $26 million, or 6.4%, from $406 million for fiscal 2018 to $380 million for fiscal 2019. The decrease in research and development expense was primarily attributable to (i) an $11 million decrease in salaries and related expenses primarily due to a decrease in headcount as a result of strategic changes to the business and (ii) a $5 million decrease in cash in lieu of equity awards as these awards are not replaced as they vest. The remaining $10 million decrease is due to other immaterial items.

**General and Administrative**

General and administrative expense increased $19 million, or 7.5%, from $253 million for fiscal 2018 to $272 million for fiscal 2019. The increase in general and administrative expense was primarily attributable to (i) an $11 million net increase in professional services fees primarily related to certain strategic initiatives, certain fees and expenses related to this offering and (ii) an $8 million increase in facilities costs resulting from the execution of a new lease for our headquarters and acceleration of amortization of the right of use asset on our existing headquarters.

**Amortization of Intangibles**

Amortization of intangibles decreased $10 million, or 4.3%, from $232 million for fiscal 2018 to $222 million for fiscal 2019. The decrease was the result of certain assets recorded at the Sponsor Acquisition that have since fully amortized.

**Restructuring and Transition Charges**

Restructuring and transition charges decreased $14 million, or 38.9%, from $36 million for fiscal 2018 to $22 million for fiscal 2019. The decrease in restructuring and transition charges was primarily attributable to (i) a
$6 million decrease in employee severance and benefits as a result of the winding down of McAfee Acceleration Program (MAP) related headcount reduction initiatives in 2019 compared to 2018 and (ii) a $7 million decrease related to nonrecurring separation costs incurred in fiscal 2018 following the separation from Intel.

### Operating Income (Loss)

<table>
<thead>
<tr>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>$ (173)</td>
</tr>
<tr>
<td>Operating income (loss) margin</td>
<td>(7.2)%</td>
</tr>
</tbody>
</table>

Operating loss improved $299 million, or 172.8%, from operating loss of $173 million for fiscal 2018 to operating income of $126 million for fiscal 2019. The improvement in operating loss to operating income was primarily attributable to (i) a $127 million increase in consumer revenue, (ii) a $109 million increase due to a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition compared to prior period, (iii) a net $44 million decrease in salaries and related expenses primarily due to a decrease in headcount as a result of our strategic initiatives, and (iv) a $28 million decrease in product placement fees and marketing development funds under agreements with certain OEM partners primarily driven by lower PC shipments, changes in sales mix to models with lower shipment cost per unit, as well as an increase in the amount recorded as a reduction to revenue as consideration paid to a customer.

### Interest Expense and Other, Net

<table>
<thead>
<tr>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>$ (307)</td>
</tr>
</tbody>
</table>

Interest expense and other, net decreased $12 million or 3.9%, from $307 million for fiscal 2018 to $295 million for fiscal 2019. The decrease in interest expense and other, net was primarily attributable to the refinancing of certain of our indebtedness in fiscal 2018.

### Provision for Income Tax Expense

<table>
<thead>
<tr>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
</tr>
<tr>
<td>Provision for income tax expense</td>
<td>$ 62</td>
</tr>
</tbody>
</table>

Provision for income tax expense increased $25 million, or 40.3%, from $62 million for fiscal 2018 to $87 million for fiscal 2019. The increase in provision for income tax expense was primarily attributable to (i) a $15 million increase in reserve for uncertain tax positions and (ii) a $9 million increase in federal tax expense due to the impact of distributions through corporate subsidiaries.
**Segment Operating Results**

**Consumer**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
<th>Dollars</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 1,161</td>
<td>$ 1,303</td>
<td>$ 142</td>
<td>12.2%</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>283</td>
<td>278</td>
<td>(5)</td>
<td>(1.8)%</td>
</tr>
<tr>
<td>Operating income</td>
<td>107</td>
<td>277</td>
<td>170</td>
<td>158.9%</td>
</tr>
<tr>
<td>Operating income margin</td>
<td>9.2%</td>
<td>21.3%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Net revenue increased $142 million, or 12.2%, from $1,161 million for fiscal 2018 to $1,303 million for fiscal 2019. The increase in net revenue was primarily attributable to (i) a $127 million increase in consumer revenue consistent with growth in consumer billings primarily driven by growth in the Core Direct to Consumer Customer subscriber base, increases in TTM Dollar Based Retention – Core Direct to Consumer Customers, increases in ARPC, and growth in Mobile & Internet Service Provider channel which is inclusive of TunnelBear and (ii) a $30 million increase due to a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition compared to prior period. These increases were partially offset by a $15 million decrease related release of revenue under reserve for a single customer in connection with such customer’s right under certain circumstances to claw-back revenue from us within twelve months of payment.

Depreciation and amortization decreased $5 million, or 1.8%, from $283 million for fiscal 2018 to $278 million for fiscal 2019. The decrease is largely the result of certain assets recorded at the Sponsor Acquisition that have since fully amortized.

Operating income increased $170 million from $107 million for fiscal 2018 to $277 million for fiscal 2019. The increase in operating income was primarily attributable to (i) the consumer revenue increase discussed above and (ii) a $28 million decrease in product placement fees under agreements with certain OEM partners primarily driven by lower PC shipments, changes in sales mix to models with lower shipment cost per unit.

**Enterprise**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Successor Fiscal Year Ended</th>
<th>Variance in</th>
<th>Dollars</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 1,248</td>
<td>$ 1,332</td>
<td>$ 84</td>
<td>6.7%</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>260</td>
<td>258</td>
<td>(2)</td>
<td>(0.8)%</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(280)</td>
<td>(151)</td>
<td>129</td>
<td>46.1%</td>
</tr>
<tr>
<td>Operating loss margin</td>
<td>(22.4)%</td>
<td>(11.3)%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Net revenue increased $84 million, or 6.7%, from $1,248 million for fiscal 2018 to $1,332 million for fiscal 2019. The increase in net revenue was primarily attributable to (i) a $79 million increase due to a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition compared to prior period, and (ii) a $15 million increase in enterprise revenue driven by growth in our cloud security products due to our sales force integration efforts following our Skyhigh acquisition in the first quarter of fiscal 2018. These increases were partially offset by a $10 million decrease in revenue from certain legacy enterprise offerings.

Depreciation and amortization decreased $2 million, or 0.8%, from $260 million for fiscal 2018 to $258 million for fiscal 2019. The decrease is largely the result of certain assets recorded at the Sponsor Acquisition that have since fully amortized.
Operating loss improved $129 million, or 46.1%, from $280 million for fiscal 2018 to $151 million for fiscal 2019. The improvement in was primarily attributable to (i) the enterprise revenue increase discussed above and (ii) a $47 million decrease in operating expenses as a result of recent strategic and transformational initiatives, primarily from lower employee expenses from lower head count.

Comparison of the 2017 Predecessor and 2017 Successor Periods to Fiscal 2018

**Net Revenue**

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$586</td>
<td>$1,490</td>
<td>$2,409</td>
</tr>
</tbody>
</table>

Net revenue was $586 million for the 2017 Predecessor period and $1,490 million for the 2017 Successor period compared to $2,409 million for fiscal 2018. The increase in net revenue was primarily attributable to (i) a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition which reduced revenue by $395 million in the 2017 Successor period compared to $151 million in fiscal 2018, (ii) an increase in consumer net revenue primarily driven by growth in the Core Direct to Consumer Customer subscriber base, increases in TTM Dollar Based Retention - Core Direct to Consumer Customers, increases in ARPC, and growth in Mobile & Internet Service Provider channel which is inclusive of TunnelBear, (iii) a $61 million increase in enterprise revenue in fiscal 2018 primarily driven by the 2018 Skyhigh acquisition that had no impact on the 2017 Predecessor or 2017 Successor periods, and (iv) a $15 million increase in net revenue for fiscal 2018 related to the release of revenue under reserve for a single customer in connection with such customer’s right under certain circumstances to claw-back revenue from us within twelve months of payment which had no impact on the 2017 Predecessor or 2017 Successor periods. These increases were partially offset by a $98 million reduction in net revenue for fiscal 2018 resulting from our adoption of ASC Topic 606 on December 31, 2017 which had no impact on the 2017 Predecessor or 2017 Successor periods.

For comparability between the 2017 Predecessor and 2017 Successor periods and fiscal 2018, we present net revenue for fiscal 2018 under ASC Topic 605 in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue under ASC Topic 605</td>
<td>$586</td>
<td>$1,490</td>
<td>$2,507</td>
</tr>
</tbody>
</table>

**Cost of Sales**

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of sales</td>
<td>$163</td>
<td>$542</td>
<td>$840</td>
</tr>
<tr>
<td>Gross profit margin</td>
<td>72.2%</td>
<td>63.6%</td>
<td>65.1%</td>
</tr>
</tbody>
</table>

Cost of sales was $163 million for the 2017 Predecessor period and $542 million for the 2017 Successor period compared to $840 million for fiscal 2018. The increase in cost of sales was primarily attributable to (i) an
increase in revenue share expense due to reduced impact of fair value adjustments to deferred revenue share due to purchase accounting that reduced revenue share expense by $96 million in the 2017 Successor period compared to a reduction of $13 million in fiscal 2018, with no impact on the 2017 Predecessor period and (ii) an increase in amortization of acquired technology, which was $2 million in the 2017 Predecessor period and $172 million in the 2017 Successor period compared to $252 million in fiscal 2018 primarily as the result of the Sponsor Acquisition and the subsequent Skyhigh and TunnelBear acquisitions. These changes were partially offset by (i) a decrease in costs due to the elimination of higher cost allocations following the Sponsor Acquisition, and (ii) a decrease of $12 million in recognition of deferred costs of sales in fiscal 2018 due to the adoption of ASC Topic 606 that had no impact to the 2017 Predecessor or 2017 Successor period.

Operating Expenses

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales and marketing</td>
<td>$212</td>
<td>$584</td>
<td>$815</td>
</tr>
<tr>
<td>Research and development</td>
<td>127</td>
<td>323</td>
<td>406</td>
</tr>
<tr>
<td>General and administrative</td>
<td>51</td>
<td>157</td>
<td>253</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>40</td>
<td>167</td>
<td>232</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>66</td>
<td>123</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>$496</td>
<td>$1,354</td>
<td>$1,742</td>
</tr>
</tbody>
</table>

Sales and Marketing

Sales and marketing expense was $212 million for the 2017 Predecessor period and $584 million for the 2017 Successor period compared to $815 million for fiscal 2018. The increase in sales and marketing expense was primarily attributable to (i) changes in the terms of agreements with certain OEM partners that caused a shift in timing of recognition and classification of channel partner payments from cost of sales to sales and marketing, (ii) an increase in commissions due to reduced impact of purchase accounting adjustments to deferred costs that reduced commissions by $36 million in the 2017 Successor period compared to a reduction of $20 million in fiscal 2018 with no impact on the 2017 Predecessor period, and (iii) additional expenses incurred in connection with new marketing campaigns initiated in fiscal 2018. These changes were partially offset by (i) a $26 million decrease in expense in fiscal 2018 due to the adoption of ASC Topic 606 primarily driven by a decrease in deferred commission recognition as some commissions are recognized over the technology constrained customer life rather than the shorter contract period of the related revenue which had no impact in the 2017 Predecessor or Successor periods and (ii) a $7 million decrease in costs due to the elimination of higher cost allocations following the Sponsor Acquisition. In addition, in fiscal 2018 employee related expenses increased due to our Skyhigh acquisition which was partially offset by savings resulting from MAP.

Research and Development

Research and development expense was $127 million for the 2017 Predecessor period and $323 million for the 2017 Successor period compared to $406 million for fiscal 2018. The decrease in research and development expense was primarily attributable to a decrease of $17 million due to the elimination of higher cost allocations following the Sponsor Acquisition and a decrease in employee related expenses driven by decreased headcount in fiscal 2018 associated with MAP. The decreases are partially offset by an increase in equity-based compensation expense which was $8 million in the 2017 Predecessor period and $2 million in the 2017 Successor period compared to $13 million in fiscal 2018.
General and Administrative

General and administrative was $51 million for the 2017 Predecessor period and $157 million for the 2017 Successor period compared to $253 million for fiscal 2018. The increase in general and administrative expense was primarily attributable to (i) an increase primarily driven by employee retention expenses for cash and equity awards that were $3 million in the 2017 Predecessor period and $10 million in the 2017 Successor period compared to $36 million in fiscal 2018, (ii) an increase in transformation initiative expenses incurred in connection with transformation of the business following the Sponsor Acquisition, of which $8 million was in the 2017 Successor period compared to $27 million in fiscal 2018, (iii) an increase in employee costs that were $9 million in the 2017 Predecessor period and $73 million in the 2017 Successor period compared to $94 million in fiscal 2018 driven by increased headcount related to the building of our back office functions post-Intel separation, and (iv) an increase in expenses of $6 million incurred in 2018 for the implementation of ASC Topic 606. These increases were partially offset by a $16 million decrease in costs due to the elimination of higher cost allocations following the Sponsor Acquisition.

Amortization of Intangibles

Amortization of intangibles was $40 million for the 2017 Predecessor period and $167 million for the 2017 Successor period compared to $232 million for fiscal 2018. The increase in amortization of intangibles was primarily attributable to (i) an increase of $7 million driven by the intangible assets from purchase accounting as a result of our Skyhigh and TunnelBear acquisitions in 2018 and (ii) an amortization of intangible assets recorded in purchase accounting in connection with the Sponsor Acquisition that was $167 million in the 2017 Successor period compared to $223 million in fiscal 2018. These increases were offset by the $40 million of amortization of intangibles in the 2017 Predecessor period.

Restructuring and Transition Charges

Restructuring and transition charges was $66 million for the 2017 Predecessor period and $123 million for the 2017 Successor period compared to $36 million for fiscal 2018. The decrease in restructuring and transition charges was primarily attributable to (i) a decrease related to costs of the separation from Intel of which $70 million were in the 2017 Predecessor period and $77 million were in the 2017 Successor period compared to $7 million in fiscal 2018 and (ii) a decrease in facilities and employee restructuring expenses driven by MAP following the Sponsor Acquisition, which were $46 million in the 2017 Successor period compared to $29 million in fiscal 2018.

Operating Loss

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating loss</td>
<td>$ (73)</td>
<td>$ (406)</td>
<td>$ (173)</td>
</tr>
<tr>
<td>Operating loss margin</td>
<td>(12.5)%</td>
<td>(27.2)%</td>
<td>(7.2)%</td>
</tr>
</tbody>
</table>

Operating loss was $73 million for the 2017 Predecessor period and $406 million for the 2017 Successor period compared to $173 million for fiscal 2018. The improvement in operating loss was primarily attributable to (i) a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition which reduced revenue by $395 million in the 2017 Successor period compared $151 million in fiscal 2018, (ii) an increase in consumer net revenue primarily driven by growth in the Core Direct to Consumer Customer subscriber base, increases in TTM Dollar Based Retention - Core Direct to Consumer Customers, increases in ARPC, and growth in Mobile & Internet Service Provider channel which is inclusive of TunnelBear, (iii) a $61
million increase in enterprise revenue in fiscal 2018 primarily driven by the 2018 Skyhigh acquisition that had no impact on the 2017 Predecessor or 2017 Successor periods, (iv) a decrease related to costs of the separation from Intel of which $70 million were in the 2017 Predecessor period and $77 million were in the 2017 Successor period compared to $7 million in fiscal 2018 and (v) a decrease in facilities and employee restructuring expenses driven by MAP which was $46 million in the 2017 Successor period compared to $29 million in fiscal 2018. These items were partially offset by (i) a $98 million reduction in net revenue for fiscal 2018 resulting from our adoption of ASC Topic 606 on December 31, 2017, which had no impact on 2017 Predecessor or 2017 Successor periods, (ii) an increase in revenue share expense due to reduced impact of fair value adjustments to deferred revenue share due to purchase accounting that reduced revenue share expense by $96 million in the 2017 Successor period compared to a reduction of $13 million in fiscal 2018, with no impact on the 2017 Predecessor period and (iii) an increase in amortization of acquired technology, primarily as the result of the Sponsor Acquisition and the subsequent Skyhigh and TunnelBear acquisitions. Improvements in the operating loss driven by higher allocations in the Predecessor period were largely offset by increases in costs relating to transformation initiatives and amortization of intangibles in the Successor periods.

For comparability between the 2017 Predecessor and 2017 Successor periods and fiscal 2018, we present operating loss for fiscal 2018 under ASC Topic 605 in the table below:

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating loss under ASC Topic 605</td>
<td>$ (73)</td>
<td>$ (406)</td>
<td>$ (113)</td>
</tr>
<tr>
<td>Operating loss margin under ASC Topic 605</td>
<td>(12.5)%</td>
<td>(27.2)%</td>
<td>(4.5)%</td>
</tr>
</tbody>
</table>

**Interest Expense and Other, Net**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest expense and other, net</td>
<td>$ (1)</td>
<td>$ (159)</td>
<td>$ (307)</td>
</tr>
</tbody>
</table>

Interest expense and other, net was $1 million for the Predecessor period and $159 million for the 2017 Successor period compared to $307 million for fiscal 2018. The increase in interest expense and other, net was primarily attributable to (i) $309 million for a full year of interest in fiscal 2018 on the $3.7 billion in debt issued in September 2017 in connection with re-capitalizing the business post separation from Intel and (ii) interest on the $504 million in debt issued in January 2018 in connection with our Skyhigh acquisition, partially offset by (i) the $90 million of interest of debt to members that was outstanding for a portion of the 2017 Successor period in connection with the Sponsor Acquisition and (ii) the $64 million of interest on the debt issued in September 2017 incurred in the 2017 Successor period.

**Provision for Income Tax Expense**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision for income tax expense</td>
<td>$ 8</td>
<td>$ .33</td>
<td>$ 62</td>
</tr>
</tbody>
</table>
Provision for income tax expense was $8 million for the 2017 Predecessor period and $33 million for the 2017 Successor period compared to $62 million for fiscal 2018. The increase in provision for income tax expense was primarily attributable to an increase in foreign withholding tax and income tax, and an increase in U.S. and state tax expense.

**Segment Operating Results**

**Change in Allocation of Costs to Segments**

Prior to fiscal 2018, we allocated shared expenses of our administrative functions, including finance, accounting, human resources, legal, operations, information technology and facilities to our reportable segments using a head count ratio of directly attributable employees. Effective fiscal 2018, the allocation metrics were changed to be based on direct identification for segment specific sites and analysis for each shared function using drivers, including surveyed time, head count or revenue mix from each segment. The change in allocation resulted in higher costs allocated to the Consumer segment and lower costs allocated to the Enterprise segment in fiscal 2018 when compared to prior periods.

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$258</td>
<td>$630</td>
<td>$1,161</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>18</td>
<td>213</td>
<td>283</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>47</td>
<td>(47)</td>
<td>107</td>
</tr>
<tr>
<td>Operating income (loss) margin</td>
<td>18.2%</td>
<td>(7.5)%</td>
<td>9.2%</td>
</tr>
</tbody>
</table>

Net revenue was $258 million for the 2017 Predecessor period and $630 million for the 2017 Successor period compared to $1,161 million for fiscal 2018. The increase in net revenue was primarily attributable to (i) a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition which reduced revenue by $181 million in the 2017 Successor period compared to a reduction of $31 million in fiscal 2018 with no impact to the 2017 Predecessor period, (ii) an increase in consumer net revenue primarily driven by growth in the Core Direct to Consumer Customer subscriber base, increases in TTM Dollar Based Retention - Core Direct to Consumer Customers, increases in ARPC, and growth in Mobile & Internet Service Provider channel which is inclusive of TunnelBear, and (iii) a $15 million increase in net revenue for fiscal 2018 related to the release of revenue under reserve for a single customer in connection with such customer’s right under certain circumstances to claw-back revenue from us within twelve months of payment which had no impact to the 2017 Predecessor or 2017 Successor periods. The adoption of ASC Topic 606 had minimal impact to the Consumer segment.

Depreciation and amortization was $18 million for the 2017 Predecessor period and $213 million for the 2017 Successor period compared to $283 million for fiscal 2018. The increase in depreciation and amortization was primarily attributable to an increase of $2 million driven by the amortization of intangible assets from purchase accounting as a result of our TunnelBear acquisition in 2018 and (ii) an increase in amortization driven by intangible assets recorded in purchase accounting due to the Sponsor Acquisition which was $193 million in the 2017 Successor period compared to $258 million in fiscal 2018. These increases were offset by the $15 million of amortization of intangibles in the 2017 Predecessor period.

Operating income (loss) was $47 million for the 2017 Predecessor period and $(47) million for the 2017 Successor period compared to $107 million for fiscal 2018. The change in operating income (loss) was primarily attributable to (i) the increase in consumer revenue discussed above, (ii) a decrease in restructuring costs associated with MAP actions and transition costs after our separation from Intel which were $17 million in the
2017 Predecessor period and $35 million in the 2017 Successor period compared to $7 million in fiscal 2018. These amounts were partially offset by (i) an increase in revenue share expense due to reduced impact of fair value adjustments to deferred revenue share due to purchase accounting that reduced revenue share expense by $96 million in the 2017 Successor period compared to a reduction of $13 million in fiscal 2018, with no impact on the 2017 Predecessor period and (ii) the change in depreciation and amortization discussed above, (iii) a $39 million increase in general and administrative costs for fiscal 2018 as a result of changes in the allocation methodology of costs shared between the segments beginning in fiscal 2018, (iv) changes in the terms of agreements with certain OEM partners that caused a shift in timing of recognition and classification of channel partner payments from cost of sales to sales and marketing. The increase in costs due to transformation initiatives and driven by our Tunnelbear acquisition in the Successor periods was offset against decrease in costs in 2018 resulting from MAP and higher cost allocations in the 2017 Predecessor period.

**Enterprise**

<table>
<thead>
<tr>
<th>(in millions, except percentages)</th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$328</td>
<td>$860</td>
<td>$1,248</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42</td>
<td>173</td>
<td>260</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(120)</td>
<td>(359)</td>
<td>(280)</td>
</tr>
<tr>
<td>Operating loss margin</td>
<td>(36.6)%</td>
<td>(41.7)%</td>
<td>(22.4)%</td>
</tr>
</tbody>
</table>

Net revenue was $328 million for the 2017 Predecessor period and $860 million for the 2017 Successor period compared to $1,248 million for fiscal 2018. The increase in net revenue was primarily attributable to (i) a reduced impact of purchase accounting adjustments primarily relating to the Sponsor Acquisition which reduced revenue by $214 million in the 2017 Successor period compared $120 million in fiscal 2018, and (ii) a $61 million increase in enterprise revenue in fiscal 2018 primarily driven by the 2018 Skyhigh acquisition that had no impact to the 2017 Predecessor or 2017 Successor periods, partially offset by a $98 million reduction in net revenue for fiscal 2018 resulting from our adoption of ASC Topic 606 on December 31, 2017 which had no impact on the 2017 Predecessor or 2017 Successor periods.

Depreciation and amortization was $42 million for the 2017 Predecessor period and $173 million for the 2017 Successor period compared to $260 million for fiscal 2018. The increase in depreciation and amortization was primarily attributable to (i) an increase in amortization driven by intangible assets recorded in purchase accounting due to the Sponsor Acquisition which was $146 million in the 2017 Successor period compared to $206 million in fiscal 2018, and (ii) an increase of $16 million driven by the intangible assets of our 2018 Skyhigh acquisition. These increases were offset by the $27 million of amortization of intangibles in the 2017 Predecessor period.

Operating loss was $120 million for the 2017 Predecessor period and $359 million for the 2017 Successor period compared to $280 million for fiscal 2018. The improvement in operating loss was primarily attributable to (i) a decrease in restructuring costs associated with MAP actions and transition costs after our separation from Intel which were $49 million in the 2017 Predecessor period and $88 million in the 2017 Successor period compared to $29 million in fiscal 2018, (ii) the enterprise revenue increase discussed above, (iii) a $39 million decrease in general and administrative costs as a result of changes in the allocation methodology of costs shared between the segments in 2018, (iv) a decrease in employee related expenses driven by decreased headcount associated with MAP, (v) a $26 million decrease in expense in fiscal 2018 due to the adoption of ASC Topic 606 primarily driven by a decrease in deferred commission recognition as some commissions are recognized over the technology constrained customer life rather than the shorter contract period of the related revenue which had no impact on the 2017 Predecessor or Successor periods, (vi) a decrease of $12 million in recognition of deferred

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costs of sales in fiscal 2018 due to the adoption of ASC Topic 606 which had no impact to the 2017 Predecessor or 2017 Successor periods, and (vii) a
decrease in costs due to the elimination of higher cost allocations following the Sponsor Acquisition. These increases were partially offset by (i) the
increase in depreciation and amortization discussed above, (ii) an increase of $27 million of employee retention expenses associated with our 2018
Skyhigh acquisition, (iii) an increase in commissions due to reduced impact of purchase accounting adjustments to deferred costs that reduced
commissions expense by $36 million in the 2017 Successor period compared to a reduction of $20 million in fiscal 2018 with no impact on the 2017
Predecessor period, and (iv) increases in costs associated with transformation initiatives in the Successor periods and additional Skyhigh operating
expenses incurred following the 2018 Skyhigh Acquisition.

For comparability between the 2017 Predecessor and 2017 Successor periods and fiscal 2018, we present net revenue and operating loss of the
Enterprise segment for fiscal 2018 under ASC Topic 605 in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor Period from January 1 to April 3, 2017</th>
<th>Successor Period from April 4 to December 30, 2017</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue under ASC Topic 605</td>
<td>328</td>
<td>860</td>
<td>1,346</td>
</tr>
<tr>
<td>Operating loss under ASC Topic 605</td>
<td>(120)</td>
<td>(359)</td>
<td>(220)</td>
</tr>
<tr>
<td>Operating loss margin under ASC Topic 605</td>
<td>(36.6)%</td>
<td>(41.7)%</td>
<td>(16.3)%</td>
</tr>
</tbody>
</table>

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Quarterly Results of Operations and Other Financial and Operations Data

The following tables set forth selected unaudited quarterly results of operations and other financial and operations data for each of the eight 13-week periods presented below, as well as the percentage that each line item represents of net revenue. The information for each of these quarters has been prepared on the same basis as the audited annual consolidated financial statements included elsewhere in this prospectus and in the opinion of management, includes all adjustments, which include only normal recurring adjustments, necessary for the fair statement of our consolidated results of operations for these periods. This data should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this prospectus. Our quarterly results of operations will vary in the future. These quarterly operating results are not necessarily indicative of our operating results for any future period.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net revenue</strong></td>
<td>$613</td>
<td>$651</td>
<td>$637</td>
<td>$654</td>
<td>$662</td>
<td>$682</td>
<td>$685</td>
<td>$716</td>
</tr>
<tr>
<td><strong>Cost of sales</strong></td>
<td>211</td>
<td>209</td>
<td>214</td>
<td>215</td>
<td>203</td>
<td>211</td>
<td>204</td>
<td>206</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>402</td>
<td>442</td>
<td>423</td>
<td>439</td>
<td>459</td>
<td>471</td>
<td>481</td>
<td>510</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>196</td>
<td>217</td>
<td>193</td>
<td>190</td>
<td>184</td>
<td>203</td>
<td>174</td>
<td>174</td>
</tr>
<tr>
<td>Research and development</td>
<td>99</td>
<td>93</td>
<td>94</td>
<td>99</td>
<td>96</td>
<td>91</td>
<td>94</td>
<td>92</td>
</tr>
<tr>
<td>General and administrative</td>
<td>57</td>
<td>62</td>
<td>59</td>
<td>64</td>
<td>72</td>
<td>77</td>
<td>78</td>
<td>60</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>59</td>
<td>58</td>
<td>58</td>
<td>55</td>
<td>55</td>
<td>54</td>
<td>55</td>
<td>55</td>
</tr>
<tr>
<td>Restructuring and transition charges</td>
<td>4</td>
<td>1</td>
<td>12</td>
<td>3</td>
<td>(1)</td>
<td>8</td>
<td>9</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>415</td>
<td>431</td>
<td>416</td>
<td>411</td>
<td>406</td>
<td>433</td>
<td>410</td>
<td>381</td>
</tr>
<tr>
<td><strong>Operating income (loss)</strong></td>
<td>(13)</td>
<td>11</td>
<td>7</td>
<td>28</td>
<td>53</td>
<td>38</td>
<td>71</td>
<td>129</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(77)</td>
<td>(77)</td>
<td>(70)</td>
<td>(73)</td>
<td>(76)</td>
<td>(76)</td>
<td>(75)</td>
<td>(75)</td>
</tr>
<tr>
<td>Foreign exchange gain (loss), net</td>
<td>(1)</td>
<td>11</td>
<td>13</td>
<td>(12)</td>
<td>43</td>
<td>(24)</td>
<td>11</td>
<td>(17)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>(91)</td>
<td>(55)</td>
<td>(50)</td>
<td>(57)</td>
<td>20</td>
<td>(62)</td>
<td>7</td>
<td>37</td>
</tr>
<tr>
<td>Provision for income tax expense</td>
<td>13</td>
<td>14</td>
<td>17</td>
<td>22</td>
<td>29</td>
<td>19</td>
<td>(2)</td>
<td>15</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>$(104)</td>
<td>$(69)</td>
<td>$(67)</td>
<td>$(79)</td>
<td>$(9)</td>
<td>$(81)</td>
<td>$9</td>
<td>$22</td>
</tr>
</tbody>
</table>

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### Table of Contents

#### Consolidated Statements of Operations, as a percentage of net revenue

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net revenue</strong></td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td><strong>Cost of sales</strong></td>
<td>34.4%</td>
<td>32.1%</td>
<td>33.6%</td>
<td>32.9%</td>
<td>30.7%</td>
<td>30.9%</td>
<td>29.8%</td>
<td>28.8%</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>65.6%</td>
<td>67.9%</td>
<td>66.4%</td>
<td>67.1%</td>
<td>69.3%</td>
<td>69.1%</td>
<td>70.2%</td>
<td>71.2%</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sales and marketing</strong></td>
<td>32.0%</td>
<td>33.3%</td>
<td>30.3%</td>
<td>29.1%</td>
<td>27.8%</td>
<td>29.8%</td>
<td>25.4%</td>
<td>24.3%</td>
</tr>
<tr>
<td><strong>Research and development</strong></td>
<td>16.2%</td>
<td>14.3%</td>
<td>14.8%</td>
<td>15.1%</td>
<td>14.5%</td>
<td>13.3%</td>
<td>13.7%</td>
<td>12.8%</td>
</tr>
<tr>
<td><strong>General and administrative</strong></td>
<td>9.3%</td>
<td>9.5%</td>
<td>9.3%</td>
<td>9.8%</td>
<td>10.9%</td>
<td>11.3%</td>
<td>11.4%</td>
<td>8.4%</td>
</tr>
<tr>
<td><strong>Amortization of intangibles</strong></td>
<td>9.6%</td>
<td>8.9%</td>
<td>9.1%</td>
<td>8.4%</td>
<td>8.3%</td>
<td>7.9%</td>
<td>8.0%</td>
<td>7.7%</td>
</tr>
<tr>
<td><strong>Restructuring and transition charges</strong></td>
<td>0.7%</td>
<td>0.2%</td>
<td>1.9%</td>
<td>0.5%</td>
<td>(0.2)%</td>
<td>1.2%</td>
<td>1.3%</td>
<td>—%</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>67.7%</td>
<td>66.2%</td>
<td>65.3%</td>
<td>62.8%</td>
<td>61.3%</td>
<td>63.5%</td>
<td>59.9%</td>
<td>53.2%</td>
</tr>
<tr>
<td><strong>Operating income (loss)</strong></td>
<td>(2.1)%</td>
<td>1.7%</td>
<td>1.1%</td>
<td>4.3%</td>
<td>8.0%</td>
<td>5.6%</td>
<td>10.4%</td>
<td>18.0%</td>
</tr>
<tr>
<td><strong>Interest expense and other, net</strong></td>
<td>(12.6)%</td>
<td>(11.8)%</td>
<td>(11.0)%</td>
<td>(11.2)%</td>
<td>(11.5)%</td>
<td>(11.1)%</td>
<td>(10.9)%</td>
<td>(10.5)%</td>
</tr>
<tr>
<td><strong>Foreign exchange gain (loss), net</strong></td>
<td>(0.2)%</td>
<td>1.7%</td>
<td>2.0%</td>
<td>(1.8)%</td>
<td>6.5%</td>
<td>(3.5)%</td>
<td>1.6%</td>
<td>(2.4)%</td>
</tr>
<tr>
<td><strong>Income (loss) before income taxes</strong></td>
<td>(14.8)%</td>
<td>(8.4)%</td>
<td>(7.8)%</td>
<td>(8.7)%</td>
<td>3.0%</td>
<td>(9.1)%</td>
<td>1.0%</td>
<td>5.2%</td>
</tr>
<tr>
<td><strong>Provision for income tax expense (benefit)</strong></td>
<td>2.1%</td>
<td>2.2%</td>
<td>2.7%</td>
<td>3.4%</td>
<td>4.4%</td>
<td>2.8%</td>
<td>(0.3)%</td>
<td>2.1%</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>(17.0)%</td>
<td>(10.6)%</td>
<td>(10.5)%</td>
<td>(12.1)%</td>
<td>(1.4)%</td>
<td>(11.9)%</td>
<td>1.3%</td>
<td>3.1%</td>
</tr>
</tbody>
</table>

146
The following tables present non-GAAP financial measures for each of the eight 13-week periods presented below. In addition to our results determined in accordance with GAAP, we believe the following non-GAAP measures are useful in evaluating our operating performance. See “Selected Consolidated and Combined Financial Data—Non-GAAP Financial Measures” and “Selected Consolidated and Combined Financial Data—Reconciliation of Non-GAAP Financial Measures” for a description of the non-GAAP measures and the adjustments to reconcile to GAAP.

### 13-Week Period Ended

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<tbody>
<tr>
<td>Net revenue</td>
<td>$613</td>
<td>$651</td>
<td>$637</td>
<td>$654</td>
<td>$662</td>
<td>$682</td>
<td>$685</td>
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<tr>
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<td>$(9)</td>
<td>$(81)</td>
<td>$9</td>
<td>$22</td>
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<tr>
<td>Net income (loss) margin</td>
<td>(17.0)%</td>
<td>(10.6)%</td>
<td>(10.5)%</td>
<td>(12.1)%</td>
<td>(1.4)%</td>
<td>(11.9)%</td>
<td>1.3%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Adjusted operating income</td>
<td>$142</td>
<td>$160</td>
<td>$169</td>
<td>$172</td>
<td>$195</td>
<td>$197</td>
<td>$229</td>
<td>$249</td>
</tr>
<tr>
<td>Adjusted operating income margin</td>
<td>23.2%</td>
<td>24.6%</td>
<td>26.5%</td>
<td>26.3%</td>
<td>29.5%</td>
<td>28.9%</td>
<td>33.4%</td>
<td>34.8%</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$157</td>
<td>$176</td>
<td>$185</td>
<td>$188</td>
<td>$210</td>
<td>$216</td>
<td>$245</td>
<td>$262</td>
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<tr>
<td>Adjusted EBITDA margin</td>
<td>25.6%</td>
<td>27.0%</td>
<td>29.0%</td>
<td>28.7%</td>
<td>31.7%</td>
<td>31.7%</td>
<td>35.8%</td>
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</tr>
<tr>
<td>Adjusted net income (loss)</td>
<td>$53</td>
<td>$82</td>
<td>$97</td>
<td>$66</td>
<td>$149</td>
<td>$84</td>
<td>$158</td>
<td>$145</td>
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<tr>
<td>Adjusted net income (loss) margin</td>
<td>8.6%</td>
<td>12.6%</td>
<td>15.2%</td>
<td>10.1%</td>
<td>22.5%</td>
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<td>23.1%</td>
<td>20.3%</td>
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<td>Net cash provided by (used in) operating activities</td>
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<td>$211</td>
<td>$171</td>
<td>$117</td>
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<td>(15)</td>
<td>(15)</td>
<td>(9)</td>
<td>(18)</td>
<td>(21)</td>
<td>(21)</td>
<td>(12)</td>
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<tr>
<td>Net cash provided by (used in) financing activities</td>
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<td>(17)</td>
<td>(344)</td>
<td>(63)</td>
<td>(62)</td>
<td>(265)</td>
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<td>(401)</td>
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<tr>
<td>Free cash flow</td>
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<td>184</td>
<td>80</td>
<td>(6)</td>
<td>171</td>
<td>190</td>
<td>150</td>
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### 13-Week Period Ended

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</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$613</td>
<td>$651</td>
<td>$637</td>
<td>$654</td>
<td>$662</td>
<td>$682</td>
<td>$685</td>
<td>$716</td>
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<tr>
<td>Add: Deferred revenue, end of period</td>
<td>1,962</td>
<td>2,107</td>
<td>2,119</td>
<td>2,119</td>
<td>2,128</td>
<td>2,292</td>
<td>2,274</td>
<td>2,265</td>
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<tr>
<td>Less: Deferred revenue, beginning of period</td>
<td>(1,922)</td>
<td>(1,962)</td>
<td>(2,107)</td>
<td>(2,119)</td>
<td>(2,119)</td>
<td>(2,128)</td>
<td>(2,292)</td>
<td>(2,274)</td>
</tr>
<tr>
<td>Billings</td>
<td>$653</td>
<td>$796</td>
<td>$649</td>
<td>$654</td>
<td>$671</td>
<td>$846</td>
<td>$667</td>
<td>$707</td>
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147
<table>
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</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$(104)</td>
<td>$(69)</td>
<td>$(67)</td>
<td>$(79)</td>
<td>$(9)</td>
<td>$(81)</td>
<td>$(9)</td>
<td>$(22)</td>
</tr>
<tr>
<td>Add: Amortization</td>
<td>121</td>
<td>122</td>
<td>121</td>
<td>116</td>
<td>116</td>
<td>117</td>
<td>116</td>
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<tr>
<td>Add: Equity-based compensation</td>
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<td>5</td>
<td>6</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Add: Acquisition and integration costs(2)</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>5</td>
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<td>2</td>
</tr>
<tr>
<td>Add: Restructuring and transition(3)</td>
<td>4</td>
<td>1</td>
<td>12</td>
<td>3</td>
<td>(1)</td>
<td>8</td>
<td>9</td>
<td>—</td>
</tr>
<tr>
<td>Add: Management fees(4)</td>
<td>2</td>
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<td>2</td>
<td>2</td>
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<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Add: Implementation costs of adopting ASC Topic 606</td>
<td>1</td>
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<td>1</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Add: Transformation initiatives(5)</td>
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<td>3</td>
<td>7</td>
<td>4</td>
<td>8</td>
<td>14</td>
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<td>—</td>
<td>3</td>
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<td>Add: Interest expense and other, net</td>
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<td>77</td>
<td>70</td>
<td>73</td>
<td>76</td>
<td>76</td>
<td>75</td>
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<tr>
<td>Add: Provision for income tax expense</td>
<td>13</td>
<td>14</td>
<td>17</td>
<td>22</td>
<td>29</td>
<td>19</td>
<td>(2)</td>
<td>15</td>
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<tr>
<td>Add: Foreign exchange loss (gain), net</td>
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<td>(11)</td>
<td>(13)</td>
<td>(12)</td>
<td>(43)</td>
<td>(24)</td>
<td>(11)</td>
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<tr>
<td>Adjusted operating income</td>
<td>142</td>
<td>160</td>
<td>169</td>
<td>172</td>
<td>195</td>
<td>197</td>
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<td>249</td>
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<tr>
<td>Add: Depreciation</td>
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<td>16</td>
<td>16</td>
<td>16</td>
<td>15</td>
<td>19</td>
<td>16</td>
<td>13</td>
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<tr>
<td>Adjusted EBITDA</td>
<td>$157</td>
<td>$176</td>
<td>$185</td>
<td>$188</td>
<td>$210</td>
<td>$216</td>
<td>$245</td>
<td>$262</td>
</tr>
<tr>
<td>Net Revenue</td>
<td>$613</td>
<td>$651</td>
<td>$637</td>
<td>$654</td>
<td>$662</td>
<td>$682</td>
<td>$685</td>
<td>$716</td>
</tr>
<tr>
<td>Net income (loss) margin</td>
<td>(17.0)%</td>
<td>(10.6)%</td>
<td>(10.5)%</td>
<td>(12.1)%</td>
<td>(1.4)%</td>
<td>(11.9)%</td>
<td>1.3%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Adjusted operating income margin</td>
<td>23.2%</td>
<td>24.6%</td>
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<td>26.3%</td>
<td>29.5%</td>
<td>28.9%</td>
<td>33.4%</td>
<td>34.8%</td>
</tr>
<tr>
<td>Adjusted EBITDA margin</td>
<td>25.6%</td>
<td>27.0%</td>
<td>29.0%</td>
<td>28.7%</td>
<td>31.7%</td>
<td>31.7%</td>
<td>35.8%</td>
<td>36.6%</td>
</tr>
</tbody>
</table>

(1) As a result of the Sponsor Acquisition, cash awards were provided to certain employees who held Intel equity awards in lieu of equity in Foundation Technology Worldwide LLC. In addition, as a result of the Skyhigh acquisition, cash awards were provided to certain employees who held Skyhigh equity awards in lieu of equity in Foundation Technology Worldwide LLC and vest over multiple periods based on employee service requirements. As these rollover awards reflect one-time grants to former employees of the Predecessor Business and Skyhigh Networks in connection with these transactions, and the Company does not have a comparable cash-based compensation plan or program in existence, we believe this expense is not reflective of our ongoing results.

(2) Represents both direct and incremental costs in connection with business acquisitions, including acquisition consideration structured as cash retention, third party professional fees, and other integration costs.

(3) Represents both direct and incremental costs associated with our separation from Intel, including standing up our back office and costs to execute strategic restructuring events, including third-party professional fees and services, transition services provided by Intel, severance, and facility restructuring costs.
(4) Represents management fees paid to certain affiliates of our Sponsors and Intel pursuant to the Management Services Agreement. The Management Services Agreement will terminate in connection with this offering and we will be required to pay a one-time fee of $ to such parties.

(5) Represents costs incurred in connection with transformation of the business post-Intel separation. Also includes the cost of workforce restructurings involving both eliminations of positions and relocations to lower cost locations in connection with MAP and other transformational initiatives, strategic initiatives to improve customer retention, activation to pay and cost synergies, inclusive of duplicative run rate costs related to facilities and data center rationalization.

(6) Represents severance to be paid for executive terminations not associated with a strategic restructuring event.

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</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$(104)</td>
<td>$(69)</td>
<td>$(67)</td>
<td>$(79)</td>
<td>$(9)</td>
<td>$(81)</td>
<td>$9</td>
<td>$22</td>
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<tr>
<td>Add: Amortization of debt discount and issuance costs</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>5</td>
<td>4</td>
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<tr>
<td>Add: Amortization</td>
<td>121</td>
<td>122</td>
<td>121</td>
<td>116</td>
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<td>6</td>
<td>15</td>
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<tr>
<td>Add: Cash in lieu of equity awards(1)</td>
<td>8</td>
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<td>5</td>
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<td>Add: Restructuring and transition(3)</td>
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<td>1</td>
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<td>3</td>
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<tr>
<td>Less: Adjustment to provision for income taxes(7)</td>
<td>(2)</td>
<td>(3)</td>
<td>(1)</td>
<td>(4)</td>
<td>11</td>
<td>2</td>
<td>(14)</td>
<td>(1)</td>
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<tr>
<td>Adjusted net income (loss)</td>
<td>$53</td>
<td>$82</td>
<td>$97</td>
<td>$66</td>
<td>$149</td>
<td>$84</td>
<td>$158</td>
<td>$145</td>
</tr>
</tbody>
</table>

| Net Revenue                      | $613               | $651               | $637           | $654            | $662              | $682            | $685          | $716          |

| Net income (loss) margin         | (17.0)%            | (10.6)%            | (10.5)%        | (12.1)%         | (1.4)%            | (11.9)%         | 1.3%          | 3.1%          |

| Adjusted net income (loss) margin| 8.6%               | 12.6%              | 15.2%          | 10.1%           | 22.5%             | 12.3%           | 23.1%         | 20.3%         |
Represents the tax impact of all of the above adjustments, as well as excluding the non-recurring tax benefits and expenses related to changes resulting from tax legislation, the assessment or resolution of tax audits or other significant events.

<table>
<thead>
<tr>
<th>13-Week Period Ended</th>
<th>Net cash provided by (used in) operating activities</th>
<th>Less: Capital expenditures(1)</th>
<th>Free cash flow</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 85</td>
<td>$ 199</td>
<td>$ 95</td>
</tr>
<tr>
<td>Free cash flow</td>
<td>$ 71</td>
<td>$ 184</td>
<td>$ 80</td>
</tr>
</tbody>
</table>

(1) Capital expenditures includes payments for property and equipment and capitalized labor costs incurred in connection with certain software development activities.

Seasonality

While portions of our business are impacted by seasonality, the net impact of seasonality on our combined business is limited. Software license and maintenance orders are generally higher in our third and fourth quarters and lower in our first and second quarters. A significant decline in license and maintenance orders is typical in the first quarter of our year as compared to license and maintenance orders in the fourth quarter of the prior year. In addition, we generally receive a higher volume of software license and maintenance orders in the last month of a quarter, with orders concentrated in the later part of that month. We believe that this seasonality primarily reflects customer spending patterns and budget cycles, as well as the impact of compensation incentive plans for our sales personnel. Revenue generally reflects similar seasonal patterns but to a lesser extent than orders because revenue is not recognized until an order is shipped or services are performed and other revenue recognition criteria are met and a large portion of our in-period revenues are recognized ratably from our deferred revenue balance. Consumer orders are generally higher in the first and fourth quarters and lower in the second and third quarters. A significant number of orders in the fourth quarter is reflective of historically higher holiday sales of PC computers leading to higher subscriptions in the fourth quarter as well as in the first quarter due to lag from computer purchase to paid subscription of our products. This seasonal effect is present both in new subscriptions as well as in the renewal of prior year subscriptions due in those quarters.

Liquidity and Capital Resources

McAfee Corp. is a holding company with no operations of our own and, as such, we will depend on our subsidiaries for cash to fund all of our operations and expenses. We will depend on the payment of distributions by our current and future subsidiaries, including Foundation Technology Worldwide LLC. The terms of the agreements governing our senior secured credit facilities contain certain negative covenants prohibiting certain of our subsidiaries from making cash dividends or distributions to us or to Foundation Technology Worldwide LLC unless certain financial tests are met. For a discussion of those restrictions, see “—Senior Secured Credit Facilities” below and “Risk Factors—Risks Related to Our Indebtedness—Restrictions imposed by our outstanding indebtedness and any future indebtedness may limit our ability to operate our business and to finance our future operations or capital needs or to engage in acquisitions or other business activities necessary to achieve growth.” We currently anticipate that such restrictions will not impact our ability to meet our cash obligations.

Sources of Liquidity

As of June 27, 2020, we had cash and cash equivalents of $257 million. Our primary source of cash for funding operations and growth has been through cash flows generated from operating activities. In addition, we

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have funded certain acquisitions, distributions to members, and to a lesser extent, capital expenditures and our operations, through borrowings under the Senior Secured Credit Facilities, primarily in the form of long-term debt obligations. As of June 27, 2020, we had $496 million of additional unused borrowing capacity under our Revolving Credit Facility.

We believe that our existing cash on hand, expected future cash flows from operating activities, and additional borrowings available under our credit facilities will provide sufficient resources to fund our operating requirements as well as future capital expenditures, debt service requirements, and investments in future growth for at least the next twelve months. Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the introduction of new and enhanced product and service offerings, and the continuing market acceptance of our products. In the event that additional financing is required from outside sources, we may not be able to raise such financing on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results, and financial condition may be adversely affected.

Senior Secured Credit Facilities

On September 29, 2017, McAfee, LLC entered into senior secured credit facilities (the “First Lien Credit Facilities”), which consisted of a U.S. dollar-denominated term loan tranche of $2,555 million (the “First Lien USD Term Loan”), a Euro-denominated term loan tranche of €507 million (the “First Lien EUR Term Loan”), and together with the First Lien USD Term Loan, the “First Lien Term Loans”), and a $500 million revolving credit facility (the “Revolving Credit Facility”). The First Lien Credit Facilities were amended: (x) on January 3, 2018 to increase the amount of the First Lien USD Term Loan by $324 million and the First Lien EUR Term Loan by €150 million; (y) on November 1, 2018 to make changes to the pricing terms and to increase the amount of the First Lien EUR Term Loan by €90 million to reduce the First Lien USD Term Loan by $50 million and prepay $50 million of the Second Lien Term Loan (as defined below); and (z) on June 13, 2019 to increase the amount of the First Lien USD Term Loan by $300 million and the First Lien EUR Term Loan by €355 million. As a result of the amendments, the First Lien Credit Facilities as of June 27, 2020 consisted of the First Lien USD Term Loan of $3,048 million, the First Lien EUR Term Loan of €1,078 million and the Revolving Credit Facility of $500 million. The Revolving Credit Facility includes a $50 million sublimit for the issuance of letters of credit.

In addition, on September 29, 2017, McAfee, LLC entered into a second lien credit facility (the “Second Lien Credit Facility”, and, together with the First Lien Credit Facilities, the “Senior Secured Credit Facilities”), which, as of June 27, 2020, consisted of a U.S. dollar-denominated term loan tranche of $525 million (the “Second Lien Term Loan”), which does not reflect the repayment of approximately $525 million of the Second Lien Term Loan using the proceeds from this offering.

The commitments under the Revolving Credit Facility will mature on September 29, 2022, and the First Lien Term Loans will mature on September 29, 2024. The Second Lien Term Loan will mature on September 29, 2025.

As of June 27, 2020, our total outstanding indebtedness under the Credit Facilities was $4,781 million.

First Lien Credit Facilities

The First Lien Term Loans require equal quarterly repayments equal to 0.25% of the total amount borrowed.

The borrowings under the Revolving Credit Facility bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 3.75% or (2) a base rate plus an applicable margin of 2.75%. The applicable margins for Eurodollar rate and base rate borrowings are subject to reductions to 3.50% and 3.25% and 2.50% and 2.25%, respectively, based on our first lien net leverage.
ratio. The Eurodollar rate applicable to the Revolving Credit Facility is subject to a “floor” of 0.0%. We are required to pay a commitment fee of 0.50% per annum of unused commitments under the Revolving Credit Facility.

The borrowings under the First Lien USD Term Loan bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 3.75% or (2) a base rate plus an applicable margin of 2.75%. The borrowings under the First Lien EUR Term Loan bear interest at a floating rate which is a EURIBOR rate for a specified interest period plus an applicable margin of 3.50%. The Eurodollar rate and EURIBOR rate applicable to the First Lien Term Loans and the Revolving Credit Facility are subject to a “floor” of 0.0%.

In addition, the terms of the First Lien Credit Facilities include a financial covenant which requires that, at the end of each fiscal quarter, for so long as the aggregate principal amount of borrowings under the Revolving Credit Facility exceeds 35% of the aggregate commitments under the Revolving Credit Facility, our first lien net leverage ratio cannot exceed 6.30 to 1.00. A breach of this financial covenant will not result in a default or event of default under the First Lien Term Loans unless and until the lenders under the Revolving Credit Facility have terminated the commitments under the Revolving Credit Facility and declared the borrowings under the Revolving Credit Facility due and payable.

Our first lien net leverage ratio was 3.6 as of June 27, 2020. For the 26-week period ended June 27, 2020, the weighted average interest rate was 4.9% under the First Lien USD Term Loan and 3.5% under the First Lien EUR Term Loan. As of June 27, 2020, we had a total of $496 million of available borrowings under the Revolving Credit Facility, of which we had no borrowing outstanding. On the amount available for borrowing, we paid a commitment fee of 0.5%.

Second Lien Credit Facility

The borrowings under the Second Lien Credit Facility bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 8.50% or (2) a base rate plus an applicable margin of 7.50%. The Eurodollar rate applicable to the Second Lien Credit Facility is subject to a “floor” of 1.0%.

As of June 27, 2020, the weighted average interest rate under the Second Lien Credit Facility was 9.8%.

Tax Receivable Agreement

The contribution by certain Continuing Owners to McAfee Corp. of certain corporate entities in connection with this offering (including the Reorganization Transactions) and future exchanges of LLC Units for cash or, at our option, shares of our Class A common stock are expected to produce or otherwise deliver to us favorable tax attributes that can reduce our taxable income. Upon the completion of this offering, we will be a party to a tax receivable agreement, under which generally we will be required to pay the TRA Beneficiaries 15% of the applicable cash savings, if any, in U.S. federal, state, and local income tax that we actually realize or, in certain circumstances, are deemed to realize as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) and tax basis adjustments in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) as a result of sales or exchanges of LLC Units after this offering, (iii) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. We generally will retain the benefit of the remaining 85% of the applicable tax savings. The payment obligations

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under the tax receivable agreement are obligations of McAfee Corp., and we expect that the payments we will be required to make under the tax receivable agreement will be substantial. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Tax Receivable Agreements.”

**Consolidated Statements of Cash Flows**

Our cash flows for the 2017 Predecessor period, 2017 Successor period, fiscal 2018, fiscal 2019 and the 26-week period ended June 29, 2019 and June 27, 2020 were:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period from</td>
<td>Period from</td>
<td>Fiscal</td>
<td>26-Week</td>
</tr>
<tr>
<td></td>
<td>January 1 to</td>
<td>April 4 to</td>
<td>Year Ended</td>
<td>Period Ended</td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>$ (65)</td>
<td>$ 316</td>
<td>$ 319</td>
<td>$ 496</td>
</tr>
<tr>
<td>Net cash provided by (used in) investing activities</td>
<td>(10)</td>
<td>(39)</td>
<td>(677)</td>
<td>(63)</td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>(23)</td>
<td>87</td>
<td>459</td>
<td>(734)</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>(95)</td>
<td>371</td>
<td>97</td>
<td>(301)</td>
</tr>
</tbody>
</table>

**Operating Activities**

For the 2017 Predecessor period, net cash used in operating activities was $65 million, as a result of a net loss of $79 million, adjusted for non-cash charges of $70 million and net cash outflow of $56 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of $60 million of depreciation and amortization and $23 million of equity-based compensation. The cash inflow from changes in operating assets and liabilities was due to a $93 million decrease in accounts receivable, net, due to seasonality in higher fourth quarter billings collected in the first quarter and a $130 million decrease in other liabilities. The decrease in other liabilities is driven by primarily from (i) the payment of annual bonus, (ii) payment of larger year-end commissions, and (iii) payment of fees under our OEM agreements due to seasonality in PC shipments and holiday sales.

For the 2017 Successor period, net cash provided by operating activities was $316 million, as a result of a net loss of $607 million, adjusted for non-cash charges of $406 million and net cash inflow of $517 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of $386 million of depreciation and amortization. The cash inflow from changes in operating assets and liabilities was due to (i) a $502 million increase in deferred revenue due to purchase accounting at the time of the Sponsor Acquisition in addition to an increase in billings in 2017, (ii) a $132 million increase in other liabilities primarily driven by employee liabilities for commissions, annual bonus amounts, cash in lieu of equity awards and related taxes that were paid in 2018, (iii) a $55 million increase in accounts payable and other current liabilities due to the timing of payments to vendors subsequent to the separation from Intel, and (iv) a $37 million decrease in other assets primarily driven by amounts received from Intel under the terms of the Sponsor Acquisition related to reimbursed separation costs and cash in lieu of equity awards payments due to employees offset by (i) an $85 million increase in accounts receivable caused by seasonality of higher fourth quarter billings when compared to first quarter billings and (ii) a $124 million increase in deferred costs caused by increasing balances subsequent to purchase accounting at the time of the Sponsor Acquisition.

For fiscal 2018, net cash provided by operating activities was $319 million, as a result of a net loss of $512 million, adjusted for non-cash charges of $568 million and net cash inflow of $263 million from changes in
operating assets and liabilities. Non-cash charges primarily consisted of $543 million in depreciation and amortization and $28 million in equity-based compensation. The net cash inflow from changes in operating assets and liabilities was primarily due to (i) a $309 million increase in deferred revenue due to an increase in billings as well as increasing balances subsequent to purchase accounting at the time of the Sponsor Acquisition, and (ii) a $29 million decrease in accounts receivable resulting from collections exceeding billings for the period, partially offset by a $54 million increase in other assets and a $26 million increase in current deferred costs, both primarily resulting from adoption of ASC Topic 606 and increasing balances subsequent to purchase accounting at the time of the Sponsor Acquisition.

For fiscal 2019, net cash provided by operating activities was $496 million, as a result of a net loss of $236 million, adjusted for non-cash charges of $612 million and net cash inflow of $120 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of $536 million in depreciation and amortization, $25 million in equity-based compensation and $18 million in deferred taxes. The net cash inflow from changes in operating assets and liabilities was primarily due to (i) a $186 million increase in deferred revenue due to increase in billings, partially offset by a $60 million increase in accounts receivable, net due to billings exceeding collections.

For the 26-week period ended June 29, 2019, net cash provided by operating activities was $96 million, as a result of net loss of $146 million, adjusted for non-cash charges of $315 million and net cash outflow of $73 million from change in operating assets and liabilities. Non-cash charges consisted primarily of $269 million in depreciation and amortization, $12 million in equity-based compensation, and $10 million in deferred income taxes. The net cash outflow from changes in operating assets and liabilities was primarily due to (i) a $48 million decrease in accounts payable and accrued liabilities primarily driven by seasonality of OEM partner payments, and (ii) a $25 million decrease in other liabilities resulting primarily from the payment of annual bonus and larger year-end commissions in the first quarter of fiscal 2019 along with the payment of cash in lieu of equity awards amounts that vested primarily in the second quarter of fiscal 2019.

For the 26-week period ended June 27, 2020, net cash provided by operating activities was $288 million, as a result of a net loss of $31 million, adjusted for non-cash charges of $309 million and net cash outflow of $52 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of $252 million in depreciation and amortization, $19 million in equity-based compensation, $5 million for deferred taxes, and $33 million in other operating activities primarily consisting of lease asset amortization, amortization of debt discount and issuance costs, and changes in foreign exchange rates. The net cash outflow from changes in operating assets and liabilities was primarily due to (i) an 86 million decrease in other liabilities, (ii) a $29 million decrease in accounts payable and accrued liabilities, (iii) a $27 million decrease in deferred revenue primarily due to recognition of prior period deferred revenue, (iv) a $22 million increase in deferred costs primarily due to increased deferred revenue share resulting from an increased consumer subscriber base and a new consumer affiliate program, and (v) a $14 million increase in prepaids and other assets primarily due to new leases signed during the period. These changes were partially offset by a $126 million decrease in accounts receivable, net due to collections exceeds billings for the period.

**Investing Activities**

For the 2017 Predecessor period, net cash used in investing activities was $10 million, which primarily related to additions to property and equipment of $29 million partially offset by $15 million in sales of investments in the period.

For the 2017 Successor period, net cash used in investing activities was $39 million, which primarily related to additions to property and equipment of $35 million.

For fiscal 2018, net cash used in investing activities was $677 million, which was primarily the result of the Skyhigh and TunnelBear acquisitions of $615 million, net of cash acquired, and additions to property and equipment of $61 million.
For fiscal 2019, net cash used in investing activities was $63 million, which was primarily related to additions to property and equipment of $56 million, $5 million of other investing activities primarily related to capitalized labor, and $2 million in an acquisition.

For the 26-week period ended June 29, 2019, net cash used in investing activities was $24 million, which was primarily the result of the additions to property and equipment of $20 million.

For the 26-week period ended June 27, 2020, net cash used in investing activities was $33 million, which was primarily the result of additions to property and equipment of $25 million and $5 million on acquisition of businesses, net of cash.

Financing Activities

For the 2017 Predecessor period, net cash used in financing activities was $23 million, which was primarily the result of $35 million of net transfers to parent partially offset by a $14 million inflow from sales of common stock through employee incentive plans.

For the 2017 Successor period, net cash provided by financing activities was $87 million, which was primarily the result of net (i) proceeds of long-term debt of $3,660 million and (ii) $217 million in proceeds from member units issuances partially offset by (i) $2,245 million in payment of debt due to members and (ii) $1,562 million in distributions to members in the period.

For fiscal 2018, net cash provided by financing activities was $459 million, which was primarily the result of net proceeds of debt of $494 million, used for our business acquisitions, net proceeds of $52 million from the modification of our debt, and $20 million in proceeds from a note issued to a member partially offset by $87 million in payment of long-term debt, and $20 million in other financing activities primarily relating to equity repurchase and equity-based compensation tax withholdings.

For fiscal 2019, net cash used by financing activities was $734 million, which was primarily the result of $1,334 million in distributions to members, $67 million in payment of long-term debt, and $13 million in other financing activities primarily relating to equity repurchase and equity-based compensation tax withholdings partially offset by net proceeds of long-term debt of $679 million and $1 million in proceeds from issuance of member units.

For the 26-week period ended June 29, 2019, net cash provided by financing activities was $407 million, which was primarily the result of (i) distributions to members of $1,034 million, (ii) payment of long-term debt of $45 million, and (iii) $7 million in other financing activities primarily relating to equity-based compensation tax withholdings, partially offset by net proceeds of long-term debt of $679 million.

For the 26-week period ended June 27, 2020, net cash used in financing activities was $162 million, which was primarily the result of (i) distributions to members of $130 million, (ii) payment of long-term debt of $21 million, and (iii) $12 million in other financing activities was primarily relating to equity repurchases and equity-based compensation tax withholdings, partially offset by $1 million in proceeds from member unit issuances. As of June 27, 2020, there are distribution amounts of $5 million that have not yet been disbursed.
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**Contractual Obligations and Commitments**

The following is a summary of our contractual obligations as of December 28, 2019:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Payments Due by Period(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>Long-term debt(2)</td>
<td>$4,799</td>
</tr>
<tr>
<td>Cash interest(3)</td>
<td>1,474</td>
</tr>
<tr>
<td>Purchase obligations</td>
<td>167</td>
</tr>
<tr>
<td>Operating lease obligations,</td>
<td>145</td>
</tr>
<tr>
<td>including imputed interests</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$6,585</td>
</tr>
</tbody>
</table>

(1) Excludes any obligations under the tax receivable agreement. Although the actual timing and amount of any payments that we make to the TRA Beneficiaries under the tax receivable agreement will vary, we expect that those payments will be significant.

(2) See Note 13 to our consolidated financial statements included elsewhere in this prospectus for further information on our long-term debt.

(3) Interest payments were calculated based on the contractual terms related to the First Lien USD Term Loan, First Lien Euro Term Loan and Second Lien Term Loan. See Note 12 to our consolidated financial statements included elsewhere in this prospectus for further information on the First Lien USD Term Loan, First Lien Euro Term Loan and Second Lien Term Loan.

### Off-balance Sheet Arrangements

As of December 28, 2019 and June 27, 2020, we did not have any relationships with unconsolidated entities or financial partnerships, such as structured finance or special purpose entities, that were established for the purpose of facilitating off-balance sheet arrangements or other purposes.

### Critical Accounting Policies and Use of Estimates

Our discussion and analysis of operating results and financial condition are based upon our consolidated and combined financial statements included elsewhere in this prospectus. The preparation of our financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures of contingent assets and liabilities. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis. Actual results may differ from those estimates.

Our critical accounting policies are those that materially affect our consolidated financial statements including those that involve difficult, subjective or complex judgments by management. A thorough understanding of these critical accounting policies is essential when reviewing our consolidated financial statements. We believe that the critical accounting policies listed below are those that are most important to the portrayal of our results of operations or involve the most difficult management decisions related to the use of significant estimates and assumptions as described above. For further information, see Note 2 of our consolidated financial statements included elsewhere in this prospectus.

### Revenue Recognition

We derive revenue from the sale of perpetual licenses and hardware, subscriptions, support and maintenance, professional services, or a combination of these items, primarily through our indirect relationships with our partners or direct relationships with end customers through our internal sales force. On December 31,
2017, we adopted ASC Topic 606. Results for the reporting period beginning December 31, 2017 are presented under ASC Topic 606, while prior period amounts are not adjusted and continue to be reported under ASC Topic 605.

We recognize revenue pursuant to the five-step framework within ASC Topic 606:

1. Identify the contract(s) with a customer: Contracts are generally evidenced by a binding and non-cancelable purchase order or agreement that creates enforceable rights and obligations.

2. Identify the performance obligations in the contract: Performance obligations are the promises contained in the contract to provide distinct goods or services.

3. Determine the transaction price: The amount of consideration we expect to be entitled for transferring the promised goods and services to the customer.

4. Allocate the transaction price to the performance obligations in the contract: standalone selling price (“SSP”) is determined for each performance obligation in the contract and a proportion of the overall transaction price is allocated to each performance obligation based on the relative value of its SSP in comparison to the transaction price except when a discount or variable consideration can be allocated to a specific performance obligation in the contract.

5. Recognize revenue when (or as) we satisfy a performance obligation: Recognition for a performance obligation may happen over time or at a point in time depending on the facts and circumstances.

Determining the nature and timing of satisfaction of performance obligations, assessing the material rights associated with it, determining the SSP of performance obligations, and determining our technology constrained customer life, which is measured as the shorter of our technology life or customer relationship life, often involves significant judgment that can have a significant impact on the timing and amount of revenue we report.

We generally consider our customer to be the entity with which we have a contractual agreement. This could be the end user, or when we sell products and services through the channel, our customer could be either the distributor or the reseller. As part of determining whether a contract exists, probability of collection is assessed on a customer-by-customer basis at the outset of the contract. Customers are subjected to a credit review process that evaluates the customers’ financial condition and the ability and intention to pay.

At contract inception, we assess the goods and services promised in our contracts with customers and identify a performance obligation for each promise to transfer to the customer a good or service (or bundle of goods or services) that is distinct - i.e., if a good or service is separately identifiable from other items in the bundled package and if a customer can benefit from it on its own or together with other resources that are readily available to the customer. To identify our performance obligations, we consider all of the goods or services promised in the contract regardless of whether they are explicitly stated or are implied by customary business practices. Determining whether products and services are considered distinct performance obligations or should be combined to create a single performance obligation may require significant judgment. We recognize revenue when (or as) we satisfy a performance obligation by transferring control of a good or service to a customer.

The transaction price is determined based on the consideration to which we will be entitled in exchange for transferring goods or services to the customer, adjusted for estimated variable consideration, if any. We typically estimate the transaction price impact of sales returns and discounts offered to the customers, including discounts for early payments on receivables, rebates or certain distribution partner incentives, including marketing programs. Constraints are applied when estimating variable considerations based on historical experience where applicable.

Once we have determined the transaction price, we allocate it to each performance obligation in a manner depicting the amount of consideration to which we expect to be entitled in exchange for transferring the goods or services to the customer.
services to the customer (the “allocation objective”). If the allocation objective is met at contractual prices, no allocations are made. Otherwise, we allocate the transaction price to each performance obligation identified in the contract on a relative SSP basis, except when the criteria are met for allocating variable consideration or a discount to one or more, but not all, performance obligations in the contract.

To determine the SSP of our goods or services, we conduct a regular analysis to determine whether various goods or services have an observable SSP. If we do not have an observable SSP for a particular good or service, then SSP for that particular good or service is estimated using an approach that maximizes the use of observable inputs. We generally determine SSPs using various methodologies such as historical prices, expected cost plus margin, adjusted market assessment or non-standalone selling prices.

We recognize revenue as control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for the promised goods or services. Revenue is recognized net of any taxes collected from customers and subsequently remitted to governmental authorities. Control of the promised goods or services is transferred to our customers at either a point in time or over time, depending on the performance obligation.

Nature of Products and Services

Certain of our perpetual software licenses or hardware with integrated software are not distinct from their accompanying maintenance and support, as they are dependent upon regular threat updates. These contracts typically contain a renewal option that we have concluded creates a material right for our customer. The license, hardware and maintenance and support revenue is recognized over time, as control is transferred to the customer over the term of the initial contract period while the corresponding material right is recognized over time beginning at the end of the initial contractual period over the remainder of the technology constrained customer life.

Alternatively, certain of our perpetual software licenses, hardware appliances, or hardware with integrated software provide a benefit to the customer that is separable from the related support as they are not dependent upon regular threat updates. Revenue for these products is recognized at a point in time when control is transferred to our customers, generally at shipment. The related maintenance and support represent a separate performance obligation and the associated transaction price allocated to it is recognized over time as control is transferred to the customer.

The nature of our promise to the customer to provide our subscriptions and time-based software licenses and related support and maintenance is to stand ready to provide protection for a specified or indefinite period of time. Maintenance and support in these cases are typically not distinct performance obligations as the licenses are dependent upon regular threat updates to the customer. Instead the maintenance and support is combined with a software license to create a single performance obligation. We typically satisfy these performance obligations over time, as control is transferred to the customer as the services are provided.

Revenue for professional services that are a separate and distinct performance obligation is recognized as services are provided to the customer.

Additional Revenue Recognition Considerations

Royalties and Managed Service Provider Revenues

Our OEM and managed service provider (“MSP”) sales channels have revenues derived from sales- or usage-based royalties. Such revenue is excluded from any variable consideration and transaction price calculations and is recognized at the later of when the sale or usage occurs, or the performance obligation is satisfied or partially satisfied.
Consideration Payable to a Customer

We make various payments to our channel partners, which may include revenue share, product placement fees and marketing development funds. Costs that are incremental to revenue, such as revenue share, are capitalized and amortized over time as cost of sales. Product placement fees and marketing development funds are expensed in sales and marketing expense as the related benefit is received.

Under certain of our channel partner agreements, the partners pay us royalties on our technology sold to their customers, which we recognize as revenue in accordance with our revenue recognition policy. In these situations, the payments made to our channel partners are recognized as consideration paid to a customer, and thus are recorded as reductions to revenue up to the amount of cumulative revenue recognized from the contract with the channel partner during the period of measurement.

Payment Terms and Warranties

Our payment terms vary by the type and location of our customer and the products or services offered. The term between invoicing and when payment is due is not significant. For certain products or services and customer types, we require payment before the products or services are delivered to the customer.

We provide assurance warranties on our products and services. The warranty timeframe varies depending on the product or service sold, and the resolution of any issues is at our discretion to either repair, replace, reperform or refund the fee.

Contract Costs

Contract acquisition costs consist mainly of sales commissions and associated fringe benefits, as well as revenue share under programs with certain of our distribution partners. For revenue share, the partner receives a percentage of the revenue we receive from an end user upon conversion to a paid customer or renewal. These costs would not have been incurred if the contract was not obtained and are considered incremental and recoverable costs of obtaining a contract with a customer. These costs are capitalized and amortized over time in accordance with ASC 340-40.

Contract fulfillment costs consist of hardware and software and related costs. These costs are incremental and recoverable and are capitalized and amortized on a systematic basis that is consistent with the pattern of transfer of the goods and services to which the asset relates. We typically recognize the initial commissions that are not commensurate with renewal commissions over the longer of the customer relationship (generally estimated to be four to five years) or over the same period as the initial revenue arrangement to which these costs relate. Renewal commissions paid are generally amortized over the renewal period.

ASC Topic 605

Prior to December 31, 2017, we recognized revenue under ASC Topic 605, when all of the following criteria had been met: (1) Persuasive evidence of an arrangement exists, (2) delivery has occurred, (3) fee is fixed or determinable, and collectability is probable. For multiple-element arrangements that include perpetual software licenses, support, and/or services, we allocated fair value to each element based on vendor-specific objective evidence (“VSOE”). If VSOE was available, we recognized when the element was delivered. If VSOE was not available for the delivered element, we applied the residual method and recognized revenue for the difference between the total arrangement fee and the aggregate fair value of the undelivered elements.

Determining whether and when some of these criteria have been satisfied often involves judgments that can have a significant impact on the timing and amount of revenue we report. Determining VSOE of the fair value of the various undelivered elements of our multiple element software transactions and the fair value of the elements within multiple-element revenue transactions where VSOE is not available involves significant judgment that can have a significant impact on the timing and amount of revenue we report.
For software and non-software multiple-element arrangements, we allocated revenue using the relative selling price method to the software elements as a group and on-software elements based on the following selling price hierarchy: (1) VSOE of fair value, (2) third-party evidence (“TPE”), and (3) best estimate of selling price (“BESP”). We then allocated the arrangement within the software group using the residual method. When we were unable to establish a selling price using VSOE or TPE, we used BESP to allocate the arrangement fees to the deliverables. We limited the amount of revenue recognized for delivered elements to an amount that was not contingent upon future delivery of additional products/services or meeting any specified performance conditions.

We recognized product revenue at the time of shipment, provided all other revenue recognition criteria had been met. We recognized service, support, and subscriptions revenue ratably over the contractual period, which typically ranged from one to three years.

Our professional services typically consist of training and implementation services. We do not typically enter into transactions that provide for significant production, modification, or customization of our software. Professional service revenue was recognized as the services are performed or, if required, upon customer acceptance.

We enter into revenue-sharing agreements with our strategic partners, primarily PC OEMs who load trial or subscription versions of the Company’s products onto their hardware products. We share a percentage of the revenue we receive from the end customer upon trial-to-paid conversion or upon renewal of a paid subscription.

We have various marketing programs with our business partners who we consider customers and reduced revenue by the cash consideration given, which was presumed to be a reduction of the selling price. We deferred costs of revenue related to revenue-sharing and royalty arrangements and commissions recognized these costs over the service period of the related revenue which was typically over one to three years.

**Goodwill**

Goodwill is recorded as the excess of consideration transferred over the acquisition-date fair values of assets acquired and liabilities assumed and primarily comprises the goodwill arising from the Sponsor Acquisition. We assign goodwill to our reporting units based on the relative fair value expected at the time of the acquisition.

We perform an annual impairment assessment in the fourth quarter or more frequently if indicators of potential impairment exist, which includes evaluating qualitative and quantitative factors to assess the likelihood of an impairment of a reporting unit’s goodwill. For reporting units in which this assessment concludes that it is more likely than not that the fair value is more than its carrying value, goodwill is not considered impaired and we are not required to perform the quantitative goodwill impairment test.

For reporting units in which the impairment assessment concludes that it is more likely than not that the fair value is less than its carrying value, we perform the quantitative goodwill impairment test, which compares the fair value of the reporting unit to its carrying value. Impairments, if any, are based on the excess of the carrying amount over the fair value. Our goodwill impairment test considers the income method and/or market method to estimate a reporting unit’s fair value.

Significant judgments are required in assessing impairment of goodwill include the identification of reporting units, estimating future cash flows, determining appropriate discount and growth rates and other assumptions. Changes in these estimates and assumptions could materially affect the determination of fair value, whether an impairment exists and if so the amount of that impairment.

**Identifiable Intangible Assets**

We amortize all finite-lived intangible assets that are subject to amortization over their estimated useful life of economic benefit on a straight-line basis.
For significant intangible assets subject to amortization, we perform a quarterly assessment to determine whether facts and circumstances indicate that the useful life is shorter than we had originally estimated or that the carrying amount of assets may not be recoverable. If such facts and circumstances exist, we assess recoverability by comparing the projected undiscounted net cash flows associated with the related asset or group of assets over their remaining useful lives against their respective carrying amounts. Impairments, if any, are based on the excess of the carrying amount over the fair value of those assets. If an asset’s useful life is shorter than originally estimated, we accelerate the rate of amortization and amortize the remaining carrying value over the updated, shorter useful life.

For our intangible assets not subject to amortization, we perform an annual impairment assessment in the fourth quarter, or more frequently if indicators of potential impairment exist, to determine whether it is more likely than not that the carrying value of the asset may not be recoverable. If necessary, a quantitative impairment test is performed to compare the fair value of the indefinite-lived intangible asset with its carrying value. Impairments, if any, are based on the excess of the carrying amount over the fair value of the asset.

Significant judgments are required in assessing impairment of intangible assets include the identifying whether events or changes in circumstances require an impairment assessment, estimating future cash flows, determining appropriate discount and growth rates and other assumptions. Changes in these estimates and assumptions could materially affect the determination of fair value, whether an impairment exists and if so the amount of that impairment.

**Equity-Based and Cash-Based Awards**

We currently provide various equity-based and cash-based compensation to those whom, in the opinion of the board of directors, are in a position to make a significant contribution to our success.

Equity-based compensation cost is measured at the grant date based on the fair value of the award and cash-based compensation cost is re-assessed at each reporting period. Both types of awards are recognized as expense over the appropriate service period. Determining the fair value of equity-based and cash-based awards requires considerable judgment, including assumptions and estimates of the following:

- fair value of the unit;
- life of the award;
- volatility of the unit price; and
- dividend yield

The fair value of the unit is determined by the Board reasonably and in good faith. Generally, this has involved a review of an independent valuation of our business, which requires judgmental inputs and assumptions such as our cash flow projections, peer company comparisons, market data, growth rates and discount rate. The Board reviews its prior determination of fair value of a unit on a quarterly basis to decide whether any change is appropriate (including whether to obtain a new independent valuation), considering such factors as any significant financial, operational, or market changes affecting the business since the last valuation date. Due to us not having sufficient historical volatility, we use the historical volatilities of publicly traded companies which are similar to us in size, stage of life cycle and financial leverage. We will continue to use this peer group of companies unless a situation arises within the group that would require evaluation of which publicly traded companies are included or once sufficient data is available to use our own historical volatility. In addition, for awards where vesting is dependent upon achieving certain operating performance goals, we estimate the likelihood of achieving the performance goals. For goals dependent upon a qualifying liquidity event (i.e., a change of control or public offering registered on a Form S-1 (or successor form), in either case, occurring on or before April 3, 2024) (a “Qualifying Liquidity Event”), we will not recognize any expense until the event occurs. Upon consummation of a Qualifying Liquidity Event, we would recognize a cumulative catch-up of expense.
based on the vesting dates for our time-based awards and expected vesting dates for our performance-based awards. Differences between actual results and these estimates could have a material effect on the consolidated financial results. We recognize forfeitures as they occur.

**Income Taxes**

Foundation Technology Worldwide LLC is a pass through entity for U.S. federal income tax purposes and will not incur any federal income taxes either for itself or its U.S. subsidiaries that are also pass through or disregarded subsidiaries. Taxable income or loss for these entities will flow through to its respective Members for U.S. tax purposes. Foundation Technology Worldwide LLC does have certain U.S. and foreign subsidiaries that are corporations and are subject to income tax in their respective jurisdiction. The provision for income taxes is calculated under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements.

We consider many factors when evaluating and estimating our tax positions, which may require periodic adjustments and may not accurately anticipate actual outcomes. Tax position recognition is a matter of judgment based on the individual facts and circumstances of our position evaluated in light of all available evidence.

After consummation of this offering, we will become subject to U.S. federal, state and local income taxes with respect to our allocable share of any taxable income of Foundation Technology Worldwide LLC and will be taxed at the prevailing corporate tax rates. In addition to tax expenses, we will also be responsible to fund payments under the tax receivable agreements, which will be significant. We anticipate that we will account for the income tax effects and corresponding tax receivable agreements effect resulting from future taxable exchanges of units by unit holders of Foundation Technology Worldwide LLC for shares of our Class A common stock by recognizing an increase in our deferred tax assets, based on enacted tax rates at the date of the exchange. Further, we will evaluate the likelihood that we will realize the benefit represented by the deferred tax asset and, to the extent that we estimate that it is more likely than not that we will not realize the benefit, we will reduce the carrying amount of the deferred tax asset with a valuation allowance. The amounts to be recorded for both the deferred tax assets and the liability for our obligations under the tax receivable agreements will be estimated at the date the agreements are executed as an adjustment to stockholders’ equity, and the effects of changes in any of our estimates after this date will be included in net income. Similarly, the effect of subsequent changes in the enacted tax rates will be included in net income. We intend to cause Foundation Technology Worldwide LLC to make distributions in an amount sufficient to allow us to pay our tax obligations, including distributions to fund any ordinary course payments due under the tax receivable agreements.

**Recent Accounting Pronouncements**

See Note 3 to our audited consolidated financial statements included elsewhere in this prospectus for information about recent accounting pronouncements.

**Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to certain risk arising from both our business operations and economic conditions. We principally manage our exposure to a wide variety of business and operational risks through management of our core business activities. We manage economic risks, including interest rate, liquidity, and credit risk primarily by managing the amount, sources, and duration of our debt funding and through the use of derivative financial instruments.

**Foreign Currency Exchange Risk**

Our sales contracts are primarily denominated in U.S. dollars. A portion of our operating expenses are incurred outside of the United States and are denominated in foreign currencies and are subject to fluctuations.
due to changes in foreign currency exchange rates, particularly changes in the Euro, Argentine Peso, Indian Rupee, British Pound Sterling, Australian Dollar, and Japanese Yen. Additionally, fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our consolidated statement of operations. The effect of an immediate 10% adverse change in foreign exchange rates on monetary assets and liabilities at June 27, 2020 would not be material to our financial condition or results of operations. To date, foreign currency transaction gains and losses and exchange rate fluctuations have not been material to our consolidated financial statements, and we have not engaged in any foreign currency hedging transactions.

As our international operations continue to grow, our risks associated with fluctuation in currency rates will become greater, and we will continue to reassess our approach to managing this risk, such as using foreign currency forward and option contracts to hedge certain exposures to fluctuations in foreign currency exchange rates. In addition, currency fluctuations or a weakening U.S. dollar can increase the costs of our international expansion, and the currently strengthening U.S. dollar could slow international demand as products and services priced in the U.S. dollar become more expensive.

**Interest Rate Risk**

We utilize long-term debt to, among other things, finance our acquisitions and, to a lesser extent, our operations. We are exposed to interest rate risk on our outstanding floating rate debt instruments which bear interest at rates that fluctuate with changes in certain short-term prevailing interest rates. Borrowings under the Senior Secured Credit Facilities bear interest at a Euro currency rate determined by reference to LIBOR, plus an applicable margin, subject to established floors of 0.00%. During the fiscal year ended December 29, 2018, the 2017 Predecessor and 2017 Successor periods and the fiscal year ended December 31, 2016, applicable interest rates have been lower than the designated floors under our Senior Secured Credit Facilities; therefore, interest rates under the Senior Secured Credit Facilities have not been subject to change. Assuming that the rates remain below the applicable floors under the Senior Secured Credit Facilities, a 25 basis point increase or decrease in the applicable interest rates on our variable rate debt, excluding debt outstanding under the Senior Secured Credit Facilities, would result in a minor change in interest expense on an annual basis.

In 2018 and through 2020, we entered into multiple interest rate swaps in order to fix a substantial amount of the LIBOR portion of our USD denominated variable rate borrowings. Our derivative financial instruments are used to manage differences in the amount, timing, and duration of the our known or expected cash payments principally related to our variable-rate borrowings.

A hypothetical 10% increase or decrease in interest rates during any of the periods presented would not have had a material impact on our interest expense.

**Inflation Rate Risk**

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

Our Pledge

We dedicate ourselves to keeping the world safe from cyberthreats. Threats that are no longer limited to the confines of our computers but are prevalent in every aspect of our connected world. We will not rest in our quest to protect the safety of our families, our communities, and our nations.

— On the walls of McAfee campuses worldwide and signed by employees

Our Company

McAfee has been a pioneer and leader in protecting consumers, enterprises, and governments from cyberattacks for more than 30 years with integrated security, privacy, and trust solutions. We built our platform through a deep, rich history of innovation and have established a leading global brand. Whether we are securing the digital experience of a consumer who is increasingly living life online, or defending many of the world’s largest enterprises and governments from sophisticated attacks and nation-state threats, McAfee is singularly committed to one mission: to protect all things that matter through leading-edge cybersecurity.

We live in a digital world. Consumers are increasingly moving their daily lives online, interacting through multiple devices, networks and platforms, and leveraging technology in nearly every aspect of their lives. This shift is most noticeable in the way individuals are working, socializing, consuming, and transacting, leading to a proliferation of digital touchpoints and applications. Remote work and increasing work from home arrangements are driving a pronounced convergence of work and personal life. While people expect effective and frictionless security at work and in their personal lives, this lifestyle shift has been accompanied by a more challenging threat landscape and an increase in points of vulnerability, risking individuals’ privacy, identity, data and other vital resources. Similarly, enterprises embracing employee mobility, work from home strategies, bring your own device, and greater cloud adoption are facing a broader attack surface and dissolving network perimeter. These drivers have amplified the number of workloads across endpoints, making it challenging for enterprises to monitor and protect all of their workloads and applications. This challenge, coupled with an increase in cyberthreats, has heightened the importance of the consumer in making security decisions for their converged digital lives.

We have a differentiated ability to secure the digital experience against cyberthreats by using threat intelligence capabilities that we have developed through the scale and diversity of our sensor network. We define our sensor network as the aggregate of our presence in all of our customers’ endpoints, networks, gateways, and clouds that generate massive amounts of data that we translate into actionable, real-time insights. The McAfee platform is continuously enriched by artificial intelligence, machine learning and the telemetry gathered from over one billion sensors across our consumer, enterprise, and government customer base. Our vast and dynamic data set and advanced analytics capabilities enable us to provide defense for advanced zero-day threats by training machine learning models on the 62.7 billion threat queries we receive each day. McAfee simplifies the complexity of threat detection and response by correlating events, detecting new threats, reducing false positives, automating and prioritizing incident response, and creating workflows that guide analysts through remediation. Protecting our customers has been the foundation of our success, enabling us to maintain an industry-leading reputation among our customers and partners.

Consumers, enterprises and governments have turned to McAfee as a leading brand in cybersecurity for over 30 years. Our Personal Protection Service provides holistic digital protection for an individual or family at home, on the go, and on the web. Our platform includes device security, privacy and safe Wi-Fi, online protection, and identity protection, creating a seamless and integrated digital moat. With a single interface, simple set up and ease of use, consumers obtain immediate time-to-value whether on a computer, smartphone or tablet, and across multiple operating systems. For enterprises and governments, we offer a comprehensive
cybersecurity solution that protects our customers against adversarial threats across cloud, on-premise, hybrid environments and endpoint devices. Our cloud-native MVISION platform offers true device-to-cloud protection with threat detection and data protection for devices, SASE solutions for the multi-cloud, centralized policy orchestration, automated threat response, and threat insights generated by our predictive analytics engine.

Our consumer focused products protected over 600 million devices as of June 27, 2020. Our consumer go-to-market strategy consists of a digitally-led omnichannel approach to reach the consumer at crucial moments in their purchase lifecycle via several direct and indirect channels. We have longstanding exclusive partnerships with many of the leading PC OEMs and continue to expand our presence with mobile service providers and ISPs as the demand for mobile security protection increases. Through many of these relationships, our consumer security software is pre-installed on devices on a trial basis until conversion to a paid subscription, through a thoughtfully tailored conversion process that fits the customer journey. Our consumer go-to-market channel also consists of partners including some of the largest electronics retailers and ISPs globally. Our enterprise business protects many of the largest enterprises and governments around the world, including 86%, 78%, and 61% of Fortune 100, Fortune 500, and Global 2000 firms, respectively, as of June 27, 2020. Some of our largest customers are government entities who represent over 25% of our 250 largest Enterprise customers, with an average tenure of nearly 20 years. We primarily engage our enterprise and government customers with our direct sales force, while mid-market customers generally conduct their business through our channel partners. We operate a global business, with 46.6% of our fiscal 2019 net revenue earned outside of the United States.

McAfee’s Transformational Journey

In 2011, McAfee was acquired by Intel and operated as a part of a business unit of Intel. Since then, McAfee has grown from $1.9 billion in net revenue in 2011 to $2.6 billion in 2019. Recognizing the growth drivers that would power a surge in our business, in 2017, our Sponsors acquired a controlling interest in McAfee, accelerating our transformational journey to optimize and reinforce our cybersecurity platform. Over the last several years, we have invested in new routes to market and partnerships for the consumer business, and rationalized our enterprise portfolio by divesting our network firewall, email, and vulnerability management businesses to reorient our focus and resources to products that align with our device-to-cloud strategy. In addition to organic initiatives, we added new capabilities and products through several strategic acquisitions. In 2018, we completed our acquisitions of TunnelBear, a consumer VPN provider, and Skyhigh, a leader in CASB and a technology that would benefit from remote workers connecting directly to cloud applications. We believe both these acquisitions have added key competencies in high-growth verticals oriented around remote work within the cybersecurity market. In 2019, we acquired Uplevel Security, a predictive security platform that helps security teams extract meaningful insights data, and NanoSec, a service identity-based approach to hybrid and multi-cloud security space. More recently, we acquired LightPoint Security, a browser isolation platform that protects users from malware, ransomware and cyberattacks. In parallel with these acquisitions, we launched MVISION, the cloud-native family of our platform that offers threat defense, management, automation, and orchestration across devices, networks, clouds (IaaS, PaaS, and SaaS), and on-premises environments. Our investments in our platform and strategy have reinforced our market leadership, and we intend to continue innovating to protect our customers.

In addition to our commitments to innovate and invest in growth technologies, we have made multiple operational changes designed to increase efficiency and adapt to the changing marketplace. Mirroring our success with PC OEMs, we have developed new partnerships with mobile OEMs and service providers and ISPs to capture a sizable share of the growing mobile consumer security market. As a result, we reinvested in several areas aimed at driving higher growth and improving efficiency in our product delivery and go-to-market strategies. These efforts included the transformation of our performance marketing through a digital first approach focused on customer engagement through both direct and indirect channels, new customer acquisition, and overall customer retention, including our PC led product experience and consumer application development and engagement. Additionally, we have invested in the infrastructure and backend processes to successfully deliver this engagement across the consumer customer journey with McAfee.
Our Industry

The Internet has led to a hyper connected world and driven profound changes in both personal and business settings. It has created new forms of communication, new business models and brought in massive productivity gains and new opportunity for economic growth. It has also created new risks to communications, commerce, privacy, and even national defense. As the Internet continues to evolve, introduce new technologies and reshape our lives, consumers, enterprises, and governments continue to react to multiple important trends.

**Online adoption use is global and continues to grow**

Globally, people are coming online faster than ever before. According to IDC, there were over 4 billion Internet users in 2020, and there were approximately 1.4 billion Internet-enabled smartphones globally in 2019. The number of mobile-only Internet users is expected to grow at an approximate 8% CAGR from 2020-2024, with growth in emerging markets contributing to this trend as mobile devices continue to become a main source of accessing information and content online. According to Frost & Sullivan, in 2020, there were over 6 billion Internet-connected devices worldwide. This significant growth in the mobile install base is driving the ubiquity of the Internet and online browsing, with the average U.S. consumer spending 3 hours daily on their smartphones accessing information, online media, online shopping, and social interactions among other things, according to eMarketer.

**The global consumer is completing more of their everyday routine online, expanding their digital footprint**

Time and budgets have shifted to the digital world as formerly in person activities like banking, finance, shopping, education, online media, and healthcare can now be completed and experienced through online platforms. Seamless, fast, and intuitive products and services delivered by Internet and software-enabled companies have reduced the friction that previously existed and have resulted in users being more comfortable engaging in critical transactions on mobile devices and their PCs. For example, according to eMarketer, worldwide ecommerce sales are expected to grow to $3.9 trillion in 2020 and increase to approximately $6 trillion by 2023. As a result, consumers are inputting and storing personal and financial data across several platforms.

At the same time, consumers are rapidly expanding their social interactions and media consumption online through social platforms such as Facebook and Instagram. Per eMarketer, the average U.S. adult spent over 7.5 hours per day consuming digital media in 2020, representing 55% of total media consumption and an increase of 12% over the prior year. Increased use of social platforms exposes more personal data as it is broadcast publicly across the web.

Last, consumers are shifting data storage online with cloud-based storage platforms like Box and Dropbox to store personal photos and large amounts of data so that they are accessible across any endpoint device which expands the digital footprint.

Families are also engaging online and accessing information across several devices. Our Q2 2020 survey shows that 63% of newly acquired U.S. McAfee customers have purchased security software because of the increased time online and a desire to protect themselves and their families from threats, viruses, and hackers. Half of families surveyed are concerned with their family coming into communication with someone suspicious, with almost 30% of families surveyed indicating that they have actually experienced this threat. While unlocking consumers’ digital lives allows for convenience, using a greater number of digital platforms increases the surface area that cybercriminals can use to access personal data.

**Increased attack surface results in high risk of being hacked and critical data used for profit**

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Cyberattacks have evolved from rudimentary malware into highly sophisticated, organized, and large-scale attacks by malicious insiders, criminal syndicates, and nation-states seeking to exploit vulnerabilities and compromise data. Total malware attacks reached over 1.2 billion during Q1 2020, with our Labs team observing 375 new threats per minute. Mobile and IoT attacks have also increased, with total mobile malware attacks growing nearly 12% higher in Q1 2020 compared to the previous four quarters, and IoT malware seeing over a 50% increase during Q1 2020 compared to Q4 2019. As the volume of threats has increased, cyberattacks have become pervasive, targeting consumers, governments, and a broad range of industries. Adversaries are converging tactics and techniques, mixing old threat vectors with new, to inflict unprecedented damage.

While consumers are increasingly aware of cybersecurity risks, digital consumption continues to rise and consumers often prefer convenience over security. For instance, our 2019 research study found that over a third of respondents admit they do not check an email sender or retailer’s website for authenticity. 74% of respondents admitted to losing more than $100 to robocalling, email phishing, and text phishing in 2019, while 30% lost more than $500 to these scams. According to Statista, only nine percent of consumers report feeling “very safe” on the Internet. According to RiskBased Security, during 2019, over 7,000 data breaches were reported, resulting in over 15 billion records being exposed. We have seen the number of threats from external actors targeting cloud services increase approximately 630% from January 2020 to April 2020. Along with rising numbers of mobile attacks, cybercriminals have simultaneously increased the sophistication and variety of their methods, ranging from backdoors to mining cryptocurrencies. Given these risks, consumers need solutions that provide comprehensive protection across their digital footprint, which are also convenient and easy to install and use.

In enterprises, cyberattacks are increasingly perpetrated by sophisticated, well-trained, and well-financed adversaries that are deliberate and targeted in their attacks. In particular, enterprises have to protect themselves from increasing ransomware attacks. Ransomware is malware that employs encryption to hold a victim’s information at ransom. A user or organization’s critical data is encrypted so that they cannot access files, databases, or applications. A ransom is then demanded to provide access. Ransomware is often designed to spread across a network and target database and file servers, and can thus quickly paralyze an entire organization. It is a growing threat, generating billions of dollars in payments to cybercriminals and inflicted significant damage and expenses for consumers, businesses, and governments.

Cyberattacks also focus on enterprises that hold troves of consumer data which result in large-scale consumer vulnerabilities. Over the last several years, financial, web services, social media, and credit reporting agency protection companies have experienced data breaches, resulting in the unauthorized access of millions of consumer’s personal identifiable information being exposed. Cyberattacks have also been targeted at governments and government agencies. Individual and nation-state bad actors attempt to exploit vulnerabilities of government’s digital infrastructure to steal information, money, and impede the delivery of essential services.

Workplace digital transformation is driving the increased use of cloud-based applications and personal devices, which is straining traditional enterprise defenses

The proliferation of cloud computing, cloud-based third-party Software as a Service (“SaaS”) applications, and unmanaged personal devices in the workplace is redefining the enterprise network and straining traditional enterprise defenses. The development of cloud-based SaaS applications and bring-your-own-device adoption has enabled the enterprise employee to bring their professional lives online and into the home. The trend started many years ago with the continued adoption of the virtualized desktop, and the COVID-19 pandemic and resulting shelter-in-place orders have accelerated the pace of workplace digital transformation.

The rapid adoption of cloud applications has increased organizations’ attack surface by moving both threats and sensitive data away from the traditional network perimeter, reducing the effectiveness of many existing security products. Cyberattacks have also fundamentally shifted from not just targeting enterprise infrastructure but also targeting people. As employees use their own devices and home or third-party Wi-Fi networks to access
enterprise data and applications they become additional targets, with hackers using phishing attacks on employees in order to gain access to enterprise assets.

- **Complexity of the IT environment and dissolution of the enterprise perimeter.** According to IDC, spending on cloud IT infrastructure including cloud software is expected to reach almost $272 billion in 2020, approximately a 16% increase year over year, and expected to grow at a CAGR of 19% from 2020 to 2024.

- **Loss of visibility and control.** As devices proliferate and perimeters dissolve, organizations are losing visibility and control of data in their environment. According to our internal research, the average enterprise uses more than 1,900 cloud services, with many not authorized by IT. As enterprise environments comprise a mix of clouds, networks, and devices, managing data security policies across this heterogeneous, multi-cloud footprint to avoid breaches and demonstrate regulatory compliance is paramount.

- **Mobility of the workforce.** IDC estimates the mobile worker population in the United States will exceed 93 million by 2024, representing 60% of the total U.S. workforce. As mobile adoption increases, the enterprise attack surface expands. We detected over 35 million total mobile malware incidents in Q4 2019.

- **Third party access.** Enterprises rely on third parties to help complete certain functions or processes. Providing enterprise network access and data to third parties further increases the attack surface area. Data breaches can result if third party networks are compromised and bad actors gain access to data that allows them to access another enterprise’s network. This can result in hackers gaining access to personal and financial data of consumers that might not have otherwise been accessible from the compromised enterprise.

With the transition of the workplace to online platforms, cybercriminals leveraged newly designed ransomware, RDP exploits, spam URLs, and other deceitful tactics to target a remotely connected and vulnerable workforce that lacked the enterprise infrastructure to protect the breach of corporate data at home. Our Threat Center observed an increase of over 40% of disclosed security incidents since the pandemic, underlining the heightened threat environment.

**Data and IT infrastructure are increasingly interdependent and require comprehensive protection solutions**

In today’s connected world, data and networks are increasingly interdependent. Both must be protected against sophisticated adversaries looking to exploit one to compromise the other. Data inside of a compromised system is at risk for exploitation. At the same time, stolen or weaponized data can be used to manipulate a network. Data protection and threat defense are the critical pillars needed to protect against these converging threats.

Primary adversarial threat vectors may consistently apply to either data or networks. Cybersecurity victims may find their data or networks held for ransom (ransomware), denied, exploited, or lost. As adversarial tactics and techniques converge to compromise data or networks, defensive technologies must also holistically apply to data protection and threat defense.

- **Data protection.** Data is one of the most important corporate assets, making it a top target for cyber criminals. As enterprises have adopted new IT technologies, gaps have emerged, including lack of visibility and control of sensitive data once it leaves the traditional network perimeter. Enterprises need a centralized solution that automatically enforces and updates a consistent policy to protect data everywhere it lives, including the cloud, corporate endpoints, networks, and unmanaged devices.

- **Threat defense.** The volume and sophistication of cyberattacks continues to increase at a rapid pace. Enterprises need consistent threat defense across endpoint, network, web, and cloud domains to defend
against cyberattacks as a vulnerability anywhere has the potential to compromise the entire system. Additionally, in today's environment, threat defenses must continuously learn from intelligence gathered and adapt to the evolving tactics and techniques of cybercriminals.

Data protection and threat defense can work synergistically in an integrated defense platform. While the former relies on policy control for data protection, the latter detects suspicious alerts that may suggest a threat to the system (and the data contained therein). Data protection and threat defense are often linked by their common end goal.

There is a need for integrated device-to-cloud cybersecurity solutions that secure consumers, enterprises and governments in a connected world by offering the following:

- **Comprehensive and convenient security solutions to protect consumers across their digital footprint.** Consumers have an increasingly expanding digital presence in their daily lives as they access different online platforms and apps to complete personal and professional tasks. These daily online interactions require solutions that provide peace of mind as consumers jump from platform to platform across multiple devices. As a result, there is a demand for products that are designed to meet consumers' anti-malware, identity, and privacy protection needs that can be used by hundreds of millions of digital users around the globe.

- **Consumer protection powered by seamless digital experience across device platforms.** Consumers require holistic digital protection for themselves, their families, and their data across devices and platforms whether they are at home, at work, or on the go. This digital protection requires an interface that is simple to set up and use, and provides ongoing protection without hampering device performance and consumer's digital experience.

- **Consumer products to address privacy needs.** A growing online presence exposes more personal and financial data. At the same time, malicious hackers are targeting attacks specifically designed to expose this data for profit. After securing personal information, hackers will often sell this data on the dark web marketplace. According to Identity Theft Resource Center, more than 490 million individuals were affected by data breaches in 2019 with an estimated global cost of cybercrime of $600 billion per year. Users are increasingly mobile, and thus at a higher risk of connecting to unsecured public Wi-Fi connections, requiring VPN solutions to address the need to secure personally identifiable information over unsecured networks.

- **Data protection and threat defense for heterogeneous, multi-cloud IT and hybrid environments.** Enterprises are seeing a significant rise in diversity of devices that both offers operational advantages to enterprises, but also creates new points of attack due to their connectivity with business-critical data. While IT infrastructures are becoming more heterogeneous, employees are demanding the same technological conveniences on the job that they are being offered at home and are increasingly accessing cloud-based services directly from devices. Additionally, many enterprises employ a hybrid IT model, requiring security solutions across their on premise IT infrastructure and virtual environments. With the growing reliance on cloud, new threat vectors have emerged, requiring enterprises and governments to have both device-to-cloud and on premise solutions that protect data and defend against threats across heterogeneous devices and clouds, rather than relying on traditional corporate network boundaries.

- **Comprehensive threat intelligence leveraging a unique global sensor network.** In an enterprise environment with an increasingly dissolving perimeter, the line between consumer and enterprise threat vectors is blurring. Cyberattacks by adversaries are often using sophisticated, well-trained, and well-financed methods to target enterprises and governments that have been tested and refined against consumers first. Consumers, enterprises, and governments require comprehensive threat intelligence that can gather massive amounts of data from multiple domains and devices and translate that data into actionable, real-time insights to protect against the evolving tactics and techniques of cybercriminals. It
is challenging for cybersecurity vendors to accomplish this without a systems approach that integrates real-time data collection, machine learning model training, and feedback across billions of sensors deployed with consumer, enterprise, and government customers and across multiple defense domains (endpoint, network, gateway, and cloud).

Key Benefits of Our Solutions

We protect consumers, enterprises, and governments with our differentiated ability to detect, analyze, and manage responses to adversarial threats. Our customers trust us to protect and defend their families, data, network, and online experience whether it is on a device or in the cloud, at home or on the go.

Our products are multi-faceted privacy protection solutions that provide consumers security in their everyday lives

Our Personal Protection Service is designed to provide a comprehensive suite of features that protect consumers and their families across their digital lives. Our products provide cross-device identity protection, online privacy, and Internet and device security against the latest virus, malware, spyware, and ransomware attacks that are pervasive across all digital devices. Personal Protection Service allows consumers to have mobile and PC virus protection across all of their devices, spam filtering capabilities, the ability to securely encrypt sensitive files on public networks, and erases digital footprints that could be used to compromise their data, identity and privacy.

Our solutions provide a seamless and user friendly experience

From working on laptops, to accessing social media on phones, or accessing home entertainment, our Personal Protection Service provides multi-device protection for the modern connected family. With a single McAfee Total Protection subscription, our customers can protect multiples devices without impeding the consumer experience via cloud-based online and offline protection across devices to enjoy security at home and on the go. While people recognize the value of computer security, most get frustrated if the software bogs down their devices. We understand that while consumers need malware protection, it should not come at the price of device performance. McAfee Total Protection comes with performance-enhancing features that allow for more productivity and entertainment by automatically assigning more dedicated processor power to the apps you are actively using. With a single interface, simple set up and ease of use, consumers obtain immediate time-to-value from our solutions once installed. Our security, privacy, and trust solutions provide a seamless and convenient experience, and an integrated digital moat. We are one of the few scaled cybersecurity companies with integrated data protection and threat defense capabilities built into technologies and solutions that span the digital ecosystem.

Our solutions with comprehensive features provide consumers peace of mind that their online experience is protected

Our Personal Protection Service is a holistic digital protection of consumers and their families wherever they are, whatever they do, and on any device they own. Personal Protection Service encompasses data and device security and identity protection through our suite of products while delivering an experience that is equally easy to use whether on a computer, a mobile smartphone or a tablet and across multiple operating system platforms.

Our solutions provide integrated threat defense and data protection, from device to cloud

Existing enterprises have repurposed on premise solutions like firewalls and fragmented cloud solutions that serve as a patchwork of enforcement points and intelligence that are each very narrow in their scope of protection. Our unified cloud and endpoint security solutions provide comprehensive threat detection and data
protection from device to cloud with unified policy control and centralized management and incident reporting. We provide customers the ability to easily extend on-premise data policies to multi-cloud environments to secure data wherever it travels or resides and prevent the risk of data loss. Additionally, our centralized management and reporting capabilities give customers visibility to potential threats and/or incidents of noncompliance. Our MVISION Cloud is designed to secure employees working on enterprise cloud services such as Office 365, Salesforce, Box, and Slack.

**Our solutions are supported by our global threat intelligence network, which is bolstered by artificial intelligence, machine learning, and deep learning to increase efficacy and efficiency**

Consumers, enterprises, and governments all benefit from shared technology and security analytics to improve the efficacy of our products. Our portfolio leverages over one billion telemetry sensors across multiple domains (device, network, gateway, and cloud) that feed our threat intelligence and insights engines. As of August 2020, our global threat intelligence engine responds to 62.7 billion threat queries and identifies 12.4 million unique threats on an average day. By leveraging artificial intelligence, machine learning, and deep learning, we use complex threat detection and response algorithms that collect data from our vast customer base to correlate events, detect new threats, reduce false positives, and guide analysts through remediation. Our Advanced Threat Research team leverages a wide range of unique skills to identify zero-day threats and partners with law enforcement agencies around the world to take down sophisticated cybercriminal syndicates.

**Market Opportunity**

We estimate that our addressable market comprised of consumer and enterprise security is $30.4 billion in 2020, and is projected to grow at a four-year CAGR of 7.9% and reach $41.2 billion in 2024.

According to Frost & Sullivan, the global consumer endpoint security market (comprised of endpoint protection and prevention and consumer privacy and identity protection) addressed by our solutions is expected to reach nearly $13.1 billion in 2020, growing to $18.7 billion in 2024. We believe the total addressable market for our consumer security solutions encompasses the above threat vectors pertinent to the digital safety of our users.

According to IDC, the addressable enterprise security market addressed by our solutions is expected to reach nearly $17.3 billion in 2020, growing at a CAGR of 6.9% through 2024. The “addressable enterprise security market” represents revenue from five markets (Web Security, SIEM, Network Security, Corporate Endpoint, and Data Loss Protection). Web/CASB is a $2.4 billion market in 2020 and growing at a CAGR of 9.1% through 2024. SIEM is a $4.5 billion market in 2020 and growing at a CAGR of 4.7% through 2024. IDP, which includes the IPS market we serve, is a $2.0 billion market in 2020 and growing at a CAGR of 6.9% through 2024. Endpoint is an estimated $7.8 billion market in 2020 and growing at a CAGR of 7.4% through 2024. Data loss protection is a $0.7 billion market in 2020 and growing at a CAGR of 6.7% through 2024.

**Competitive Strengths**

Our competitive strengths include:

- **Brand recognition in both Consumer and Enterprise segments.** We have been a trusted provider of cybersecurity products for over 30 years and have built a strong reputation of trust in the market. We have built this brand by protecting hundreds of millions of consumers and many of the world’s largest enterprises with a portfolio of products that has an established track record of industry leadership. Our brand recognition drives customer stickiness and bolsters our mutually-beneficial long-standing partner relationships.

- **Scale and diversity of threat intelligence network.** The McAfee portfolio is continuously enriched by the intelligence gathered from over one billion sensors across diverse domains and multiple segments.
(consumers, enterprises, and governments) to inform our machine learning, deep learning and artificial intelligence capabilities. Our vast data set combined with artificial intelligence and proprietary algorithms enables us to provide defense for advanced zero-day threats by training machine learning models on the billions of threat queries we receive each day.

- **Experienced management team with deep cybersecurity expertise.** Our world-class management team has extensive SaaS, consumer, cloud, device, and network expertise. The team has a proven track record of building innovative products and cultivating effective go-to-market strategies at scaled public and private software businesses. Our Chief Executive Officer, Peter Leav, is a software and security pioneer, and has been leading software and IT businesses for more than a decade. Most recently, prior to McAfee, Mr. Leav led the turnaround of BMC Software Corporation, a renowned IT Services Management company. Other key members of our management team have held senior leadership positions at Apple, Cisco, eBay, EMC, Informatica, Intel, Intuit, Microsoft, Symantec, ServiceNow, and Skyhigh.

Competitive strengths specific to our Consumer business include:

- **Holistic cybersecurity solutions seamlessly integrated across the consumers’ entire digital ecosystem.** We strive to secure the digital experience of consumers and their loved ones, whether at home or at work, and protect their privacy across multitude of devices, on the web, on the go, at home, and virtually anywhere else, with our holistic platform of personal protection and secure home cybersecurity solutions. With a single interface, simple set up, and ease of use, consumers obtain immediate time-to-value from our solutions once installed. Our security, privacy, and trust solutions provide a seamless and integrated digital moat. We are one of the few scaled cybersecurity companies with integrated data protection and threat defense capabilities built into technologies and solutions that span the digital ecosystem.

- **Unique footprint across devices.** Our consumer solutions protected over 600 million devices, as of June 27, 2020. Our massive security footprint spans traditional devices including PCs, mobile devices including smartphones and tablets, home gateways and smart / IoT devices, allowing us to better protect the consumer than our competitors. The vast data on digital interaction and threat queries from these endpoints helps inform our intelligence and insights engine, directly helping us improve the quality of security provided to our customers.

- **Differentiated omnichannel go-to-market strategy.** Our leading brand and cybersecurity platform have enabled McAfee to secure longstanding exclusive partnerships with many of the leading PC and mobile OEMs, communications and ISPs, electronics retailers, ecommerce sites, and search providers. These relationships have been built on years of trust, partnership and integration, spanning up to nineteen years in length. We have designed these partnerships to be mutually beneficial and work closely with our partners to drive a highly engaging customer experience and mutual success. For example, our PC OEM partnerships may include frequent executive and multi-function meetings including sales, performance marketing, product, and engineering teams. In one case, the PC OEM has dedicated resources to the McAfee customer acquisition journey in order to continuously improve our customer experience and thus improve our conversion rates. Throughout the partnership, the PC-OEM and McAfee have launched online campaigns, updated the PC-OEM specific McAfee conversion page, and grew geo engagement. McAfee recommendations to the PC-OEM relationship are based on McAfee’s “test and learn” methodology to ensure high likelihood of success. McAfee and the PC-OEM review recent performance, agree on issues to address, and align on mutual short- and long-term objectives. All of these factors have contributed to creating entry barriers for other cybersecurity providers to establish similar relationships.

Competitive strengths specific to our Enterprise business include:

- **Comprehensive device-to-cloud platform spanning cloud, on-premise, and hybrid IT environments.** Our leading EPP detects advanced threats across a breadth of heterogeneous device environments, including
PCs, servers, and mobile devices across multiple popular operating systems. Our MVISION Cloud is designed to protect data across the full spectrum of sanctioned and unsanctioned cloud (SaaS, PaaS, and IaaS) and hybrid environments. On-premise deployments are protected with both our SWG appliance designed to prevent unsecured traffic from entering the internal network and our network intrusion prevention appliance that measures network traffic flows to detect and prevent vulnerability exploits. This is all managed through our ePO, an industry-leading management console that provides a view into complex security environments with centralized policy orchestration and automated threat response.

- **Blue chip enterprise and exclusive government customer base with a long history of partnership.** We defend the largest enterprises as well as governments globally. Our customer base included 86% of the Fortune 100, 78% of the Fortune 500, and over 61% of the Global 2000, as of June 27, 2020. Our solutions are purposely designed for the heterogeneous, multi-cloud IT environments prevalent among Global 2000 enterprises, where we also have a large installed customer base. Our largest customers are typically our longest tenured customers and purchase the most number of products from our portfolio to meet their business needs. For example, as of June 27, 2020, our 250 largest customers had an average of seven products with us and an average tenure of 19 years. We believe this represents a large cross-sell and up-sell opportunity into our existing customer base. Some of our largest customers are government entities who represent over 25% of our 250 largest Enterprise customers, with an average tenure of nearly 20 years.

**Our Growth Strategy**

Our strategy is to maintain and extend our technology leadership in cybersecurity solutions for consumers, enterprises, and governments by driving frictionless and secure digital experiences whether users are at home, at work, or on the go. The following are key elements of our growth strategy:

- **Continue to leverage our strength as a trusted cybersecurity brand to increase sales from new and existing customers.** We have one of the most trusted brands and comprehensive cybersecurity platforms in the market with competitive offerings for consumers, enterprises, and governments. We believe it is essential for us to keep investing in strengthening our brand through superior solutions and thoughtful customer engagement. We believe there is a significant growth opportunity within our core business as our portfolio of solutions continues to expand. We will continue to target and educate new customers across consumer, enterprise, and government through our various sales & marketing motions.

- **Continue to pursue targeted acquisitions.** We have successfully acquired and integrated businesses and technologies in the past that have extended our product capabilities and helped us improve our position in new and existing markets, including Skyhigh (a leader in CASB), TunnelBear (a consumer VPN provider), NanoSec, Lightpoint Security, and Uplevel Security. We intend to continue making targeted acquisitions and believe we are uniquely positioned to successfully execute on our acquisition strategy by leveraging our scale, global reach and routes to market, brand recognition, and data assets.

Key elements specific to our Consumer growth strategy include:

- **Invest in new and existing routes to market for consumer customers.**
  - **Direct-to-Consumer.** We have seen increased momentum in our direct-to-consumer go to market strategy. We will continue to invest in digital and performance marketing motions, and our website, McAfee.com, in order to educate consumers, drive more page visits and greater customer conversion, and improve user experience.
  - **PC OEMs, Retail and Ecommerce.** We are well positioned to drive continued growth through our PC OEM, retail and ecommerce routes to market. We will continue to invest in opportunities to enhance our brand recognition as a leading cybersecurity provider and strengthen our value proposition to our PC OEM partners. Additionally, we will continue to develop and invest in new
and existing retail and ecommerce relationships through which we sell our software for purchase and download at third party locations.

• Communications Service Providers and ISPs. With over 4 billion Internet users, 1.4 billion units in annual smartphone sales, per IDC, and an average daily mobile screen-time of over 3 hours (eclipsing television consumption), according to eMarketer, globally, mobile providers and ISPs are becoming among the most important enablers of consumers’ digital migration. ISPs are increasingly starting to invest in on-demand video streaming, gaming, online shopping, and other digital offerings as a part of their broader platform offering. Thus, we believe there is a huge opportunity to reach consumers via this route. We intend to drive new customer growth by expanding our relationships with communications service providers and ISPs utilizing the cross-platform functionality of our solutions.

We will continue to apply best practices learned in each of these routes to market across channels to strengthen our overall go-to-market strategy and drive greater customer conversion and renewal.

• Enhance and tailor the subscriber conversion and renewal process. We intend to supplement our holistic product offering and brand recognition with analytics and thoughtfully designed, effective marketing to drive consumer stickiness and trust. These initiatives are comprised of performance marketing and other digital marketing approaches, engagement initiatives, and touchpoints at critical junctures in the customer’s conversion and renewal journeys. Our analytics platform provides us with the insights to optimize the landing pages of our multi-experience websites and optimizes our check-out and payment processes. As we expand our routes to market and partnerships, we strive to evolve our conversion and renewal process and educate partners to best support mutually beneficial consumer-centric initiatives.

• Continue to innovate and enhance our consumer security platform and user experience. We are dedicated to protecting our customer’s digital experience across devices, networks, and online interactions. We plan to continue to invest in new product and platform innovation while continuing to unify policy control and management to help protect data wherever it resides or travels and defend against threats across multiple domains. At the product level, we have created a platform of integrated solutions that aligns with consumer needs for a holistic, easy to use cybersecurity solution. We will continue to utilize our “test and learn” design methodology to improve the customer experience while ensuring our products deliver value and an engaging experience on PC, mobile, tablet, and online. As the digital world gets more complex, our approach is to continue to offer unified solutions that meet customer needs.

Key elements specific to our Enterprise strategy include:

• Invest in new and existing routes to market for enterprise and government customers.
  • Direct sales force. We will continue to invest in our existing direct sales force of more than 1,200 sales professionals, including field, inside sales, sales engineering, and channel resources to provide global reach and scale. Additionally, we use our analytics and training capabilities to work with our salesforce to drive sustainable productivity gains.
  • Public cloud service providers. We will continue to invest in partnerships with public cloud service providers, such as Amazon, Google, Microsoft, and Oracle. As enterprises increasingly adopt public cloud deployments, these partnerships enable us to access a growing customer base by enabling them to streamline deployment of the cloud-native family of our platform, MVISION, to secure their public cloud environments and applications.
  • Channel partners. We will continue to invest in partnerships through an ecosystem of distributors, MSSPs, and systems integrators. These relationships enable us to tap into a wide range of customers, extend our global reach, and benefit from opportunities where our partners offer their customers McAfee solutions bundled with expert assessments and service.
Focus on winning in endpoint and cloud security to further enhance our device-to-cloud platform. We are a leader in the emerging cloud security and cloud-native endpoint security markets. We offer the industry’s leading CASB solution that protects data across the full spectrum of sanctioned and unsanctioned cloud environments (SaaS, PaaS, and IaaS). Combined with our growing SWG and UCE solutions, we provide broad-based cloud security to enterprises, and as of June 27, 2020, 10% of our Core Enterprise Customers used all three of our UCE components. On the device side, we provide industry leading endpoint security solutions composed of rapidly growing EDR and next-gen AV solutions, and more mature DLP solutions. As one of the few integrated cybersecurity providers, with the added advantage of telemetry data from a billion endpoints, we are well positioned to rapidly grow our CASB, EDR, extended detection and response (“XDR”), SWG, and SASE-based UCE security, and compete against the several point solution providers in the enterprise security landscape. Given the limitations of other pure-play cloud vendors that only address a very narrow set of IT security needs, we plan to continue to extend our cloud capabilities to proximate adjacencies across our entire portfolio of enterprise solutions to further advance our market leading position in cloud security and help both new and existing customers harness the power of our unified security platform. We aim to continue to unify policy control and management to deliver a holistic device-to-cloud platform to protect data wherever it resides or travels.

Our Products

We have one of the industry’s most comprehensive cybersecurity portfolios protecting both consumers’ digital life and enterprises from device to cloud.

For Consumers

Our Personal Protection Service provides holistic digital protection of the individual and family wherever they go, whatever they do and whatever they own. It encompasses device security, privacy, and safe Wi-Fi, online protection, and identity protection through a trusted brand with an experience that is equally easy to use.
whether on a computer, a mobile smartphone or a tablet and across multiple operating system platforms. Our Personal Protection Service delivers a multi-experience user interface with no performance trade-offs, and with a focus on simple and seamless protection during a consumers’ digital experience. Our platform frees consumers to work on sensitive files, videoconference their friends, and have their kids go on social media platforms while having peace of mind that our Personal Protection Service is keeping their data and files encrypted, alerting them when they are at risk, and helping them to resolve security threats. We achieve this by integrating the following solutions and capabilities within our Personal Protection Service:

- **Device Security.** Our award-winning Anti-Malware Software and real-time threat defense has won over 50 awards since 2015 and helps protect over 600 million consumer devices across Android, iOS, and Windows protected from viruses, ransomware, malware, spyware and phishing as of June 27, 2020. Our net promoter score grew from 36 in 2019 to 41 as of June 27, 2020. These 600 million devices, as part of our over one billion threat sensors, help power our threat intelligence engine. As consumers expand their digital footprint with an increasing number of devices and share personal data among them by hopping from one device to another, our threat intelligence engine becomes more robust. We built our Total Protection / LiveSafe solution with the purpose of protecting all of our consumers’ data, regardless of the device they are using or the network they are on. Through our interface, consumers can easily protect additional devices and have peace of mind by being able to observe each device’s security status. Beyond PCs and mobile, we have developed our Secure Home Platform (“SHP”) that protects consumer household IoT systems. Provided through major service providers and router OEMs around the world, our SHP simplifies network security in the home and protects household IoT devices, such as Alexa, smart TVs, and gaming systems.

- **Online Privacy and Comprehensive Internet Security.** Our Safe Connect VPN and TunnelBear help consumers make any Wi-Fi connection safe and private. With bank-grade AES 256-bit encryption, our solution keeps personal data, such as banking account credentials and credit card information protected while keeping IP addresses and physical locations private. This capability helps consumers prevent password and data theft and IP-based tracking and allows customers to access global content, by bypassing local censorship. Consumers can add an additional layer of protection with FileLock by creating password-protected encrypted drives to store their sensitive files, such as tax returns and financial documents. Once these documents are not needed anymore they can be securely deleted with Shredder. Our WebAdvisor acts as a trusted companion protecting consumers from accessing malware and phishing sites while surfing and from downloading unsafe files. As we protect the consumer’s digital life, we also offer our Safe Family solution to keep children safe while they learn to navigate the digital life. Our parental control software blocks age-inappropriate websites, provides device usage monitoring and device restriction services and gives parents the ability to track children’s devices.

- **Identity Protection.** Our IdentityProtection includes cyber monitoring, which searches over 600,000 online black markets—including the Dark Web—for compromised personally identifiable information, credit monitoring and SSN trace, helping consumers take action to prevent from fraud. Our solution also helps consumers recover from fraud through our 24/7/365 support and range of additional services, such as our full-service ID restoration, stolen funds reimbursement, lost wallet recovery, and identity theft insurance, covering expenses up to $1 million. Our Password Manager adds another level of security by securely managing and storing various complex passwords eliminating potential weaknesses caused by simple or re-used passwords.

We also provide these services to consumers who want to complement their existing protection in the form of individual products, such as Mobile Security, Safe Connect, Safe Family, WebAdvisor, and Identity Theft Protection, as well as to consumers who want to protect their complete digital life through our Total Protection and LiveSafe portfolio brands.

In addition, we extended our protection services to small business owners and the gamer community. Our Small Business Security package helps small businesses keep their businesses and customer data safe by
leveraging our award-winning multi-device protection and privacy capabilities, enhanced with our 24/7 technical support and virus removal service. Our Gamer Security package delivers anti-malware functionality while enhancing gaming performance. By offloading threat detection to the cloud, keeping necessary virus definitions locally, and optimizing system resources like CPU, GPU, and RAM by pausing background services, we deliver a smoother and safer gaming experience.

For Enterprises and Governments

Through our integrated and open platform for heterogeneous, multi-cloud and on premise environments, we help enterprises and governments manage multivendor cybersecurity environments and stay ahead of, and defend themselves against, threats from the device to cloud.

- **MVISION Device.** Our next generation endpoint solutions offer comprehensive threat detection and data protection for both modern and legacy devices, such as traditional endpoints, mobile, and fixed-function systems. Integrated with the native Windows 10 security system and our **MVISION Platform**, our cloud-native **MVISION Endpoint** offers advanced detection and correction capabilities to Windows 10 environments, including rollback remediation and credential theft monitoring, with unified management and automated workflow control through **MVISION ePO**, our industry-leading management console. Our **MVISION EDR** investigates an average of 94 million security threats per day and detects an average of 4.9 million unique threats per day as of August 2020. Through our **MVISION EDR** we provide investigative playbooks guided by artificial intelligence to resource-constrained security operations center analysts, allowing our customers to accelerate investigations and detect the most sophisticated threats faster.

- **MVISION Cloud.** Our **UCE Offering**, comprised of our CASB, SWG, and DLP products, protects data from device to cloud, and prevents web-based and cloud-native threats that are invisible to the corporate network. That allows employees to use their personal or corporate devices to safely access SaaS applications, such as Office 365 and Box. With our **Cloud-Native Application Protection**, comprised of our CASB, cloud security posture management, cloud workload protection platform and integrated with DevOps tools, we help customers to accelerate their application delivery while improving the governance, compliance and security of their containers workloads.

- **MVISION Security Services.** Our industry-leading management console, **MVISION ePO**, helps our customers to manage their full endpoint estate, from PCs to tablets and mobile devices, to automate their policy controls, and to simplify their back-office and IT environment through a comprehensive view into their multivendor cybersecurity environment. **MVISION Insights** provides actionable and preemptive threat intelligence by leveraging our cutting-edge threat research, augmented with
sophisticated artificial intelligence applied to real-time threat telemetry streamed from over 1 billion global sensors, social media, and other telemetry. By synthesizing these data in an easily digestible format, we help our customers to understand within minutes if they are currently in a target rich environment and help them prioritize their threats, predict impacts, and prescribe safeguards proactively.

**MVISION XDR**

dramatically expands the capabilities of traditional EDR solutions through a fully integrated, SaaS based platform that provides a complete view of the threat activity by normalizing and contextualizing a rich set of sources within one console. This allows analysts to rapidly discover and mitigate threats against networks, users, and data.

**Our Technology**

We deploy the latest technologies to maintain our competitive advantage in our product offerings for consumers, enterprises, and governments as well as to design a digital experience for consumers that drive customer engagement, satisfaction, and retention.

**Quality of Our Protection and AI**

Our solutions defend against a wide range of threats by using technology that leverages a combination of threat intelligence and artificial intelligence. Unlike other alternatives that rely only on artificial intelligence, our approach minimizes false positives while detecting a wide range of threats, including new zero-day threats that have never been seen before. Additionally, we utilize a hybrid approach where both local- and cloud-based artificial intelligence models work to protect our customers. Furthermore, cloud models can be updated rapidly and transparently to customers while the local models are able to provide defense during disconnected or isolated scenarios.

Our solutions are enhanced by our **Global Threat Intelligence Telemetry** from detected events across the product portfolio in addition to structural and behavioral feature vectors from telemetry collected through our artificial intelligence sensors. This telemetry enables McAfee to understand the blueprint of threats for which we do not necessarily possess the sample but can identify based on behavioral and structural vectors which improves our efficacy in detecting zero-day threats.

Our **Machine Learning Scanner** provides two options for performing automated analysis—on the device or in the cloud. The former uses machine learning on client systems to determine whether existing and incoming files match known malware. The client-based scanning sensitivity levels, which are based on mathematical formulas, assign tolerance to suspected activity to assess whether the file matches known malware. Our cloud-based machine learning scanner collects and sends file attributes and behavioral information to the machine-learning system in the cloud for malware analysis, without transmitting personally identifiable information.

**Anti-Malware Engine**

Our anti-malware engine is the core component of our award-winning endpoint and gateway products. Using patented technology, the engine analyzes potentially malicious code to detect and block Trojans, viruses, worms, adware, spyware, and other threats. The engine scans files at particular points, processes, and pattern-matches malware definitions with data it finds within scanned files, decrypts, and runs malware code in an emulated environment, applies heuristic techniques to recognize new malware, and removes infectious code from legitimate files.

**Consumer Experience Innovation**

We continuously improve the digital experience for consumers through the following technologies:

- **Platform Innovation.** Our continuous innovations across our online presence, ecommerce, analytics, and product platform aim towards creating the best-possible experience for consumers. Our analytics
platform draws from millions of consumer engagement interactions, accumulated over years and years, provides us with the insights to craft the ideal consumer experience. We use these insights to design a comprehensive, unified seamless security experience for consumers that can be managed from any mobile device. This rich set of engagement patterns also allows us to fine-tune the purchasing process by displaying the right landing page and choosing the ideal payment provider to ensure a successful transaction. Combined with our next generation messaging system and tailored marketing campaigns, we improve customer engagement, satisfaction, as well as acquisition efficiency and retention.

- **Ability to Integrate with Our Partners.** Through our ongoing collaboration with our OEM partners, we developed an integrated consumer experience that increases the conversation of potential indirect customers to our platform. Working closely with each OEM, we are continuously testing and improving each element of the consumer journey, from our tailored OEM landing pages and messaging, to our product trials, trial experience, offerings options, pricing, and shopping chart and payments experience. Additionally, we also integrated our product platform with leading telecommunication providers, retailers, as well as networking equipment manufacturers to be the underlying platform for their mobile and IoT related security offerings.

**Technology Underlying Our Enterprise Products**

Our enterprise portfolio is enhanced by the following core technologies:

- **Next Generation Endpoint Security.** Our intelligent and proactive endpoint security platform uses native operating system controls, behavioral blocking, and exploit prevention, and machine-learning and deep-learning technologies to prevent and detect advanced threats (including fileless attacks and ransomware) and to rollback any damages if executed. MVISION EDR helps to prevent threats by capturing events, files, process objects, and system state changes in combination and to surface suspicious behavior with the help of with several analytics engines. Behavior-based detection results map to the MITRE ATT&CK mapping, supporting a more consistent process to determine the phase of a threat and its associated risk and to prioritize a response. Simplified and AI-guided investigation then provides analysts with investigative playbooks and allows them to concentrate on key findings.

- **MVISION Cloud Platform.** Our industry-leading UCE connects to cloud service APIs as well as end-user devices to gain visibility into data and user activity. This integration across SWG, DLP, and CASB allows our MVISION Cloud to set and enforce centralized policy definitions, grant access control over managed and unmanaged devices and set cloud data and permission controls. As virtualization moves from the operating to the application level, we extended our data security, threat prevention, governance, and compliance capabilities to container-based workloads. Our container-based security technology evaluates the code for security gaps embedded in the containers, ensures the correct environment configuration, and monitors inter-container communication. With the ability to fully integrate our security technology and toolsets in the DevOps process, security risks can be addressed prior to the application development. The quality of our cloud security capabilities are underlined by our partnership with Google to integrate our security solutions with Cloud Platform (GCP). Through our partnership, we help GCP customers to gain visibility into security and compliance risks across their GCP environment, quickly identify threats and misconfigurations, and act on them before they result in a breach or data loss.

- **DXL Open Architecture.** Our architecture is open and modular and is facilitated by DXL, one of the largest open messaging fabrics in the industry, which automatically shares threat intelligence across all nodes connected to it and is supported by 30 contributing vendors with over 100 distinct integrations. Our openness is also supported by our Security Innovation Alliance, one of the largest ecosystems in the industry, features 131 partners that deliver hundreds of pre-integrated multivendor solutions, many with unified management and workflows. CASB Connect, the industry’s leading self-serve program, allows virtually any cloud environment to be secured within days, without writing a single line of code. It allows enterprises to securely apply a consistent set of security policies across all API-based cloud services. The
Our Customers

Consumer

We are a leading consumer security provider, protecting over 600 million consumer devices from PCs to IoT, tablets, and mobile devices worldwide. Our consumers tend to earn higher incomes, have children, and live in urban or suburban markets, according to a survey we conducted in 2018. We reach consumers through our omnichannel go-to-market approach including direct online acquisition, OEMs, physical retailers, and other channel partners. We protect over 30.1 million core subscribers; we have a direct billing relationship and subscription for at least one McAfee product with 16.6 million core direct to consumer customers as of Q2 2020. Our core direct to consumer customers account for more than 85% of our annual subscription revenue on average. In addition, as of Q2 2020, we had another 14.5 million subscribers (excluding mobile and ISP customers) who transacted with our retail/ecommerce or PC-OEM partners. We leverage our diversified go-to-market strategy to address a wide range of customers, independent on their purchasing preference, and to convert these channel led customers to core direct to consumer customers, for which we own the billing relationship, when they come up for renewal.

Enterprise

We protect many of the largest governments and enterprises around the world, including 86%, 78%, and 61% of Fortune 100, Fortune 500, and Global 2000 firms, as of June 27, 2020, respectively. Some of our largest customers are government entities who represent over 25% of our 250 largest Enterprise customers, with an average tenure of nearly 20 years. Our 250 largest customers have an average of seven McAfee products and an average tenure of 19 years of services as of June 2020. We have a diversified customer base, and no end customer represented more than 5% of net revenues over the past three years.

Research and Development

Our research and development efforts begin with a focus on our customers. We listen to our customers, seek to understand their challenges, and then use technology to develop innovative solutions designed to solve their problems and protect what matters most. Our global team is responsible for the architecture, design, development, testing, and operations of our device-to-cloud security platform which includes our consumer targeted offerings, as well as our offerings for enterprises and governments. Our internal team of security experts, researchers, intelligence analysts, and threat hunters continuously analyze the evolving global threat landscape to develop products that defend against today’s most sophisticated and stealthy attacks and reports on emerging security issues.

We are continuously reinventing and disrupting ourselves to better serve our customers, as we continue to help our customers secure their digital transformation efforts with our device-to-cloud security platform. We work closely with our customers and partners to gain valuable insight into enterprise and consumer security needs, trends, and practices to assist us in designing new features that extend the capabilities of our platform and drive growth. Our engineering and product teams continuously monitor and test our solutions to ensure the highest efficacy and quality in the industry. We also maintain a regular release process to update and enhance all our solutions. In addition, our teams work with third-party validation groups to ensure transparent reporting on the security efficacy of our platform.

Our research and development team is also responsible for operating our cloud services, and for keeping our customers updated with information on the availability, reliability, and performance of these services.

Our research and development expenses were $127 million, $323 million, $406 million, and $380 million for the 2017 Predecessor period, the 2017 Successor period, fiscal 2018, and fiscal 2019, respectively. Our
research and development leadership team is located in Santa Clara, CA, and is responsible for a globally distributed organization spread across Santa Clara (CA), Plano (TX), Hillsboro (OR), New York (NY), Waterloo (Canada), Bengaluru (India), Hyderabad (India), Cordoba (Argentina), Cork (Ireland), Tel Aviv (Israel), Paderborn (Germany), and Aylesbury (UK).

Sales and Marketing

Consumer

Our consumer go-to-market engine consists of a digitally-led omnichannel approach to reach the consumer at crucial moments in their purchase lifecycle including direct to consumer online sales, acquisition through trial pre-loads on PC OEM devices, and other indirect modes via additional partners such as mobile providers, ISPs, electronics retailers, ecommerce sites, and search providers. In many cases, the consumer becomes a direct McAfee customer upon subscription conversion or renewal.

Direct to consumer marketing. We market directly to consumers through our website, McAfee.com, with digital sales motions and analytics-based cart conversion capabilities.

PC OEMs. We have a strong PC OEM partner ecosystem with major OEMs including Dell, HP, Lenovo, Asus, and Samsung, in which we pre-install a 30-day free trial of our security platform. Our digital and performance marketing engine engages with the purchasing customer to highlight the value of the security platform and convert the consumer to a direct McAfee customer. In some cases, PC OEMs preinstall a one-year or longer subscription and the OEM pays McAfee a royalty. During the subscription lifecycle, McAfee engages the consumer with our digital marketing engine to convert the consumer to a McAfee customer at the end of the subscription period.

Retail and ecommerce. We partner with major retailers worldwide including Office Depot, Staples, Walmart, Sam’s Club, MediaMarkt, Best Buy, and Amazon, to offer consumers a McAfee subscription for purchase through the retailer stores and ecommerce websites. During the subscription lifecycle McAfee engages the consumer with our digital marketing engine to convert the consumer to a McAfee customer at the end of the subscription period.

Communications Service Providers, ISPs and Mobile providers. We partner with major service providers worldwide including Verizon, T-Mobile, CenturyLink, Telefonica, NTT Docomo, Softbank, British Telecom, and Sky, to offer our mobile security and secure home platform products through the service providers. In some cases, we also partner with the service providers to integrate and bundle one or more of our security products into their mobile product value added service offerings. In addition to our partnerships with service providers, we partner with Samsung to pre-install one or more of our security products on their smartphones.

Search Providers. McAfee also partners with search engine providers to integrate our secure web search products.

Our omnichannel approach and strong partnerships work together to increase McAfee’s presence at key moments of purchase and security engagement for consumers, allowing us to drive customer engagement and acquisition of new customers. We use a thoughtfully designed digital marketing motion, inclusive of search engine marketing, search engine optimization, email marketing, and retargeting techniques to engage with the consumer at different critical points in their renewal journey. This digital marketing motion drives conversion and renewal throughout the subscription lifecycle to develop multi-year relationships with the customer and increase retention rates.

Enterprise

Our enterprise go-to-market strategy leverages direct and indirect routes to market to support customers based on the maturity of our relationship. Our most established accounts are serviced directly by our field sales
teams. These teams are focused on driving customer outcomes to increase the perceived value of our solutions and secure cross-sell and upsell opportunities from existing customers. Emerging accounts and new customers are primarily serviced through a global inside sales engine. These sales teams work with indirect routes to market to position our solutions and secure a stronger foothold in customer accounts.

Across our customer base, we deploy a multitude of resources to scale our engine. Sales engineers work across all accounts to deliver technical expertise for the most complex cybersecurity environments. Our Customer Success organization drives successful deployment, adoption, consumption, value realization, and cybersecurity posture outcomes for customers. Working in tandem with our Engineering and Sales organizations, these teams help customers to successfully maintain our products. We estimate that our support and services teams engage in more than two million hours of customer interaction per year. We estimate that our Professional Services team engages in approximately 600,000 hours per year and operates some of the world’s largest security environments through personnel deployed at customer sites. Our extensive service and support capabilities allow us to generate security outcomes with our customers and identify cross-sell and upsell opportunities across our base.

Our alternate routes to market include cloud service providers (Amazon, Google, Microsoft, and Oracle) and an ecosystem of two-tier and one-tier distribution channel partners, MSSPs and systems integrators. These relationships enable us to tap into a wide range of customers, extend our global reach, and benefit from opportunities where our partners offer their customers McAfee solutions bundled with additional service.

Our enterprise marketing strategy uses a digital mix of paid and programmatic display, search engine marketing, search engine optimization, retargeting, online media, and webinars to augment our last-mile efforts of public and private events and customer briefings. We use brand awareness campaigns, inclusive of broadcast and digital media, to increase our brand reputation and account-based marketing tactics to support demand generation for high-value customers and prospects.

Competition

The market for cybersecurity solutions for enterprises, governments, and consumers is intensely competitive and constantly evolving. Conditions in our market are prone to frequent and rapid changes in technology, customer requirements and preferences, and industry standards resulting in frequent new product and service offerings and improvements and the entrance of new market participants. As a result we face a broad set of competitors, representative of the diverse security domains in which we operate, including but not limited to the following in the consumer and enterprise market:

- In the consumer cybersecurity market, we face competition from players, such as NortonLifelock, Avast/AVG, Kaspersky, Trend Micro, ESET, and Microsoft, which expanded from desktop anti-malware into mobile, security, VPN, and identity protection among others. At the same time we compete with point-tool providers, such as Cujo and Dojo in the home IoT space or AnchorFree, ExpressVPN, and ProtonVPN in the network security space, across our full consumer offering.

- In the enterprise cybersecurity market, we compete both with larger integration providers, such as Symantec (a division of Broadcom), Palo Alto Networks, Sophos, Microsoft, Trend Micro, and Sentinel One in the endpoint, networking, and CASB space, as well as with point solutions focusing on a subset of the cybersecurity market. These competitors include Crowdstrike, Carbon Black (a division of VMware), Tanium, and Cylance (a division of BlackBerry) in the endpoint market, Netskope, and Bitglass in the CASB market, IBM and Cisco in network intrusion, Forcepoint, and Zscaler in the SWG market, and IBM, Splunk, Micro Focus, Dell, and LogRhythm in the security operations market.

In addition, we expect additional competition from other established and emerging companies as the market for security-as-a-service continues to develop and expand and as industry consolidation occurs.
The principal competitive factors in the markets for our solutions include:

- brand recognition and reputation;
- scale and diversity of threat intelligence network;
- tenure and strength of customer and partner relationships;
- breadth and integration of product offerings;
- unique footprint across devices;
- product features, reliability, performance, and effectiveness;
- price and total cost of ownership;
- strength and productivity of sales and marketing efforts;
- quality of customer service; and
- financial resources and stability.

We believe we compete favorably across these factors. However, certain of our current and potential competitors may have competitive advantages, such as more extensive international operations, larger product development and strategic acquisition budgets, or greater financial, technical, sales, or marketing resources than we do. For additional information about the risks to our business related to competition, see “Risk Factors—Risks Related to Our Business and Industry—We operate in a highly competitive environment and we expect competitive pressures to increase in the future, which could cause us to lose market share.”

**Intellectual Property**

Our intellectual property is an important and vital asset of the company that enables us to develop, market, and sell our products and services and enhance our competitive position. We rely on trademarks, patents, copyrights, trade secrets, license agreements, intellectual property assignment agreements, confidentiality procedures, non-disclosure agreements, and employee non-disclosure and invention assignment agreements to establish and protect our proprietary rights.

We maintain an internal patent program to identify inventions that provide the basis for new patent applications in areas of importance to our business. As of June 27, 2020, we had approximately 1,340 issued U.S. patents, in addition to approximately 680 issued foreign patents and approximately 615 pending U.S. and foreign patent applications, which generally relate to inventive aspects of our products and technology. We have filed more than 65 patent applications in 2020 alone. The duration of our issued patents is determined by the laws of the issuing country. Although we have patent applications pending, there can be no assurance that patents will issue from pending applications or that claims allowed on any future issued patents will be sufficiently broad to protect our technology. Also, these protections may not preclude competitors from independently developing products with functionality or features similar to our products.

In certain cases, we license intellectual property from third parties for use in our products and generally must rely on those third parties to protect the licensed rights. This can include open source software, which is subject to limited proprietary rights. While the ability to maintain and protect our intellectual property rights is important to our success, we believe our business is not materially dependent on any individual patent, copyright, trademark, trade secret, license, or other intellectual property right.

**Employees**

As of June 27, 2020, we employed more than 6,850 people worldwide. We also engage temporary employees and consultants as needed to support our operations. None of our employees in the United States are
represented by a labor union or subject to a collective bargaining agreement. However, certain of our international employees are members of works councils or subject to collective bargaining agreements. We have not experienced any material work stoppages, and we consider our relations with our employees to be good.

As of the second quarter of fiscal 2019, we achieved global pay parity, defined as fair and equal pay for employees in the same job, level, and location—regardless of gender—and controlling for pay differentiators such as performance, tenure, and experience.

Facilities

Our corporate headquarters is located in San Jose, California pursuant to the terms of an 11-year lease that was entered into on April 10, 2019 for approximately 84,000 square feet of space. We also conduct finance, accounting, sales and marketing, and administration activities in Plano, Texas where we own an office building with approximately 170,000 square feet of space. In addition, we lease space for personnel in locations throughout the United States and various international locations, including significant research and development activities in India and Argentina, significant sales and operational offices in Ireland, the U.K., Canada, and Japan and smaller sales and marketing offices located in major markets around the globe. We believe that our current facilities are adequate to meet our current needs.

Legal Proceedings

From time to time, we are subject to various legal proceedings and claims, either asserted or unasserted, which arise in the ordinary course of business. While the outcome of these matters cannot be predicted with certainty, we do not believe that the outcome of any of these matters, individually or in the aggregate, will have a material adverse effect on our consolidated financial condition, results of operations, or cash flows.
Executive Officers and Directors

Below is a list of the names, ages, positions and a brief account of the business experience of the individuals who serve as our executive officers and directors as of the date of this prospectus.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter Leav</td>
<td>49</td>
<td>President, Chief Executive Officer and Director</td>
</tr>
<tr>
<td>Venkat Bhamidipati</td>
<td>53</td>
<td>Executive Vice President and Chief Financial Officer</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>45</td>
<td>Executive Vice President and Chief Product Officer, Enterprise Business Group</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>57</td>
<td>Executive Vice President and General Manager, Consumer Business</td>
</tr>
<tr>
<td>Lynne Doherty McDonald</td>
<td>47</td>
<td>Executive Vice President, Global Sales and Marketing, Enterprise Business Group</td>
</tr>
<tr>
<td>Sohaib Abbasi</td>
<td>64</td>
<td>Director</td>
</tr>
<tr>
<td>Mary Cranston</td>
<td>72</td>
<td>Director</td>
</tr>
<tr>
<td>Tim Millikin</td>
<td>37</td>
<td>Director</td>
</tr>
<tr>
<td>Jon Winkelried</td>
<td>60</td>
<td>Director</td>
</tr>
<tr>
<td>Kathy Willard</td>
<td>54</td>
<td>Director</td>
</tr>
<tr>
<td>Jeff Woolard</td>
<td>51</td>
<td>Director</td>
</tr>
</tbody>
</table>

**Peter Leav** has been the President and Chief Executive Officer of McAfee since February 2020. Prior to McAfee, Mr. Leav served as President and CEO of BMC Software, a software and services company that helps enterprises meet escalating digital demands and maximize IT innovation, from December 2016 to April 2019. Prior to BMC, Mr. Leav served as President and CEO of Polycom, a global collaboration business serving the enterprise market, from December 2013 to September 2016. He also served as President of Industry and Field operations at NCR Corporation, the global leader in consumer transaction technologies. Prior to NCR, Mr. Leav was Corporate Vice President and General Manager of Motorola’s enterprise business in North America, Latin America and EMEA. Earlier in his career, he held executive sales leadership positions at Symbol Technologies, Cisco Systems, and Tektronix. Mr. Leav has served on the board of Box since June 2019, and previously served on the boards of Proofpoint (July 2019 to February 2020) and HD Supply, Inc. (October 2014 to July 2017). Mr. Leav holds a bachelor’s degree from Lehigh University. Our board of directors believes that Mr. Leav’s board and industry experience qualifies him to serve on our board of directors.

**Venkat Bhamidipati** has been an Executive Vice President and the Chief Financial Officer at McAfee since September 2020. In this role, he oversees the finance, IT, and security operations strategy and teams that support McAfee’s business worldwide. Prior to McAfee, Mr. Bhamidipati was an Executive Vice President and the Chief Financial Officer at Providence, a healthcare system with $25B in annual revenues, from July 2017 to September 2020. In this role, he led all finance and most corporate functions, including information technology, growth and corporate development, supply chain, and real estate. Prior to his role at Providence, Mr. Bhamidipati spent 13 years at Microsoft from June 2004 to July 2017, where he held several executive positions, including, Chief Financial Officer of the Worldwide Enterprise and Partner Group, Chief Financial Officer of the Worldwide Operations Group, and Managing Director for Business Development and Strategy. Mr. Bhamidipati earned a Master’s degree in Commerce from Osmania University and an M.B.A in Finance and Marketing from the Kelly School of Business at Indiana University.

**Ashutosh Kulkarni** has been an Executive Vice President and the Chief Product Officer of the Enterprise Business Group at McAfee since October 2018. Prior to joining McAfee, he was the senior vice president and general manager of the web security and web performance businesses at Akamai Technologies (“Akamai”), a publicly traded content delivery network and cloud service provider, from August 2015 to October 2018. During
his tenure at Akamai, he led the teams that delivered the leading web application firewall, bot management, and DDoS mitigation solutions in the industry. Prior to Akamai, he served in various senior leadership roles at Informatica and, as senior vice president and general manager, led Informatica’s cloud integration business, as well as their core data integration and data quality businesses. Mr. Kulkarni began his career at Sun Microsystems where he worked in various engineering, product management, and product marketing roles. Mr. Kulkarni earned an M.S. in engineering from the University of Texas at Austin and an M.B.A. degree from the University of California, Berkeley.

Terry Hicks has been the Executive Vice President of the Consumer Business Group at McAfee since November 2018. Prior to McAfee, Mr. Hicks served as Chief Operating Officer of Infusionsoft from January 2017 to November 2018, where he directly managed all functions as he translated the company’s mission and vision into strategy and execution by building and developing a team passionate about delivering innovative products that help small businesses succeed. Prior to being named Chief Operating Officer at Infusionsoft, Mr. Hicks served as their Chief Product Officer from July 2015 to December 2016. In this role, Mr. Hicks led the product and business development and payments teams for Infusionsoft’s sales and marketing software for small businesses. Prior to Infusionsoft, Mr. Hicks spent 15 years in leadership roles at Intuit.

Lynne Doherty McDonald has been the Executive Vice President of Global Sales and Marketing at McAfee since May 2020. Ms. Doherty McDonald joined McAfee from Cisco, where she most recently served as Senior Vice President of U.S. Commercial Sales from August 2018 to May 2020. In this role, she oversaw a team of more than 2,000 employees, drove $8B in revenue annually, serving 400,000+ accounts. Prior to this position, she served on Cisco’s Security Sales team for the Americas from January 2017 to October 2018, overseeing a $2B portfolio of products across the U.S., Canada and Latin America. Prior to this position, Ms. Doherty McDonald served as the Area Vice President of the Eastern United States from June 2013 to January 2017. Earlier in her career, Ms. Doherty McDonald served as a programmer at Bell Atlantic before joining Sun Microsystems as a Regional Executive in Sales and Engineering. Ms. Doherty McDonald holds a bachelor’s degree in mathematics and computer and information science from Temple University.

Sohaib Abbasi has served as a Director of McAfee since November 2018. He also serves as director for StreamSets Inc. (since July 2017), Nutanix (since March 2020) and is the chair of the board for Peakon (since June 2020). Mr. Abbasi previously served as a director of Red Hat (March 2011 to July 2019), and New Relic (May 2016 to September 2019). In addition, he serves as a senior advisor to TPG. Mr. Abbasi served as president and chief executive officer of Informatica from July 2004 until August 2015. He served as chairman of Informatica from March 2005 until December 2015. Prior to Informatica, Mr. Abbasi served at Oracle Corporation for 20 years, most recently, as a member of Oracle’s executive committee and as senior vice president of two major divisions, Oracle Tools and Oracle Education. Mr. Abbasi earned a bachelor’s degree and an M.S. degree from the University of Illinois at Urbana-Champaign. Our board of directors believes that Mr. Abbasi’s board and industry experience qualifies him to serve on our board of directors.

Mary Cranston has served as a Director of McAfee since October 2018. Since December 2012 when she retired from her position as the Firm Senior Partner and Chair Emeritus of Pillsbury Winthrop Shaw Pittman LLP, an international law firm, Ms. Cranston has served on various boards of companies and non-profits, including Visa, Inc. (since 2007), where she is a member of the audit and risk committee, The Chemours Company (since 2015), MyoKardia (since May 2016), Boardspan (since March 2016), CSAA Insurance Group (since 2008). Ms. Cranston holds a bachelor’s degree in political science from Stanford University, a J.D. degree from Stanford Law School, and M.A. degree in education from the University of California, Los Angeles. Our board of directors believes that Ms. Cranston’s legal and board experience qualifies her to serve on our board of directors.

Tim Millikin has served as a Director of McAfee since April 2017. He is a Partner at TPG based in San Francisco, California, where he co-leads TPG’s investment activities in software & enterprise technology. Mr. Millikin has served on the board of Ellucian since September 2015, and previously served on the board of

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Renaissance Learning from June 2018 to February 2019, INFINIDAT from March 2017 to February 2019, and Isola Group from July 2012 to January 2018. Mr. Millikin holds an M.B.A. degree from the Stanford Graduate School of Business, where he was an Arjay Miller Scholar, and a bachelor’s degree from Dartmouth College. Our board of directors believes that Mr. Millikin’s board and industry experience qualifies him to serve on our board of directors.

**Jon Winkelried** has served as a Director of McAfee since January 2018. He is the Co-Chief Executive Officer and a Partner of TPG based in San Francisco, California. Prior to joining TPG in 2015, Mr. Winkelried was with Goldman, Sachs & Co. for more than 27 years, until he retired in 2009 as Co-President and Co-Chief Operating Officer. Mr. Winkelried has served on the board of directors for Evolution Media since May 2016, Anastasia Beverly Hills since August 2018, Bounty Minerals LLC since December 2012, RealCadre LLC since September 2018, and ATTN: since March 2019, and he serves on the Board of Overseers for Memorial Sloan Kettering Cancer Center since June 2008. He was elected to the Board of Trust of Vanderbilt University in 2012, and was elected Chair for the Investment Committee in 2017. He served as a trustee at the University of Chicago from 2006 to 2012. Mr. Winkelried received a bachelor’s degree in business from the University of Chicago and an M.B.A. degree from the University of Chicago. Our board of directors believes that Mr. Winkelried’s board and industry experience qualifies him to serve on our board of directors.

**Kathy Willard** has served as a Director of McAfee since November 2019. She has served as the Chief Financial Officer of Live Nation Entertainment since September 2007. Prior to this role, Ms. Willard served in various positions at Live Nation Entertainment as well as its predecessors, Clear Channel Entertainment and SFX Entertainment, originally joining the organization in 1998. Earlier in her career, she served as an Audit Manager at Arthur Andersen from 1988 to 1993. Ms. Willard is also a member of the board of directors for the House of Blues Music Forward Foundation. Ms. Willard received a bachelor of business administration degree in accounting at the University of Oklahoma. Our board of directors believes that Ms. Willard’s financial expertise and industry experience qualify her to serve on our board of directors.

**Jeff Woolard** has served as a Director of McAfee since August 2019. Mr. Woolard has held numerous roles at Intel during the past 25 years, serving as a Corporate Vice President and the Chief Financial Officer of the Technology, Systems Architecture and Client Groups since June 2020. Prior to this role, Mr. Woolard served as a Vice President and Chief Financial Officer for Intel Capital and the New Technology Group from March 2013 until June 2020, focusing on Intel’s corporate venture investments and acquisition activities. Mr. Woolard received a bachelor’s degree in finance from Arizona State University and an M.B.A. from the University of Washington. Our board of directors believes that Mr. Woolard’s board and industry experience qualifies him to serve on our board of directors.

**Controlled Company**

Upon completion of this offering our Sponsors and Intel will continue to control a majority of the voting power of our outstanding common stock. As a result, we will be a “controlled company” under the Exchange’s standards. As a controlled company, exemptions under the Exchange’s standards will exempt us from certain of the Exchange’s corporate governance requirements, including the requirements:

- that our board that is composed of a majority of “independent directors,” as defined under rules;
- that the compensation committee that is composed entirely of independent directors; and
- that the nominating and corporate governance committee that is composed entirely of independent directors.

Accordingly, for so long as we are a “controlled company,” you will not have the same protections afforded to stockholders of companies that are subject to all of the Exchange’s corporate governance requirements. In the event that we cease to be a controlled company, we will be required to comply with these provisions within the transition periods specified in the rules of the Exchange.
These exemptions do not modify the independence requirements for our audit committee, and we expect to satisfy the member independence requirement for the audit committee prior to the end of the transition period provided under the Exchange’s listing standards and SEC rules and regulations for companies completing their initial public offering.

Board Composition and Director Independence

Our business and affairs are managed under the direction of our board of directors. Upon the closing of this offering, our amended and restated certificate of incorporation will provide that our board of directors shall consist of at least three but not more than 12 directors and that the number of directors may be fixed from time to time by resolution of our board of directors. Our board of directors will initially consist of seven members. Our amended and restated certificate of incorporation will provide that our board of directors will be divided into three classes of directors, as nearly equal in number as possible. The initial division of the three classes is as follows:

- Class I, which will initially consist of , and , whose terms will expire at our annual meeting of stockholders to be held in 2021;
- Class II, which will initially consist of , and , whose terms will expire at our annual meeting of stockholders to be held in 2022; and
- Class III, which will initially consist of , and , whose terms will expire at our annual meeting of stockholders to be held in 2023.

Upon the expiration of the initial term of office for each class of directors, each director in such class shall be elected for a term of three years and serve until a successor is duly elected and qualified and until his or her earlier death, resignation or removal. Subject to the terms of the stockholders agreement that we intend to enter into in connection with this offering, any additional directorships resulting from an increase in the number of directors or a vacancy may be filled by the directors then in office, even if less than a quorum, or by a sole remaining director.

In connection with this offering, we will enter into a stockholders agreement with investment funds affiliated with our Sponsors, Intel and certain other stockholders governing certain nomination rights with respect to our board of directors following this offering. Under the agreement, we are required to take all necessary action to cause the board of directors to include individuals designated by TPG and Intel in the slate of nominees recommended by the board of directors for election by our stockholders, as follows:

- for so long as TPG owns at least 25% of the shares of our Class A and Class B common stock held by TPG upon completion of this offering (and the expected use of proceeds therefrom), including any exercise of the underwriters’ option to purchase additional shares, and the Reorganization Transactions, TPG will be entitled to designate six individuals for nomination, including three unaffiliated directors who meet the independence criteria set forth in Rule 10A-3 under the Exchange Act;
- for so long as TPG owns less than 25% but at least 10% of the shares of our Class A and Class B common stock held by TPG upon completion of this offering (and the expected use of proceeds therefrom), including any exercise of the underwriters’ option to purchase additional shares, and the Reorganization Transactions, TPG will be entitled to designate two individuals for nomination, including one unaffiliated director who meets the independence criteria set forth in Rule 10A-3 under the Exchange Act;
- for so long as Intel owns at least 25% of the shares of our Class A and Class B common stock held by Intel upon completion of this offering (and the expected use of proceeds therefrom), including any exercise of the underwriters’ option to purchase additional shares, and the Reorganization Transactions, Intel will be entitled to designate two individuals for nomination; and
- for so long as Intel owns less than 25% but at least 10% of the shares of our Class A and Class B common stock held by Intel upon completion of this offering (and the expected use of proceeds therefrom), including any exercise of the underwriters’ option to purchase additional shares, and the Reorganization Transactions, Intel will be entitled to designate one individual for nomination.
TPG and Intel will have the exclusive right to remove their respective designees and to fill vacancies created by the removal or resignation of their designees, and we are required to take all necessary action to cause such removals and fill such vacancies at the request of TPG or Intel, as applicable.

Our board of directors has undertaken a review of the independence of each director. Based on the information provided by each director concerning his or her background, employment, and affiliations, our board of directors has determined that each of , , and are independent directors under the rules of the Exchange. In making this determination, the board of directors considered the relationships that such directors have with our Company and all other facts and circumstances that the board of directors deemed relevant in determining such directors’ independence, including beneficial ownership of our capital stock by each non-employee director and their affiliates, and the transactions involving them described in “Certain Relationships and Related Party Transactions.”

Board Committees

Upon the completion of this offering, our board of directors will have three standing committees: the audit committee; the leadership development and compensation committee; and the nominating and corporate governance committee. Each of the committees will operate under its own written charter adopted by the board of directors, each of which will be available on our website upon completion of this offering. Members serve on these committees until their resignation or until otherwise determined by our board of directors.

Pursuant to the terms of our stockholders agreement, following this offering, TPG and Intel will each have the right to appoint a director to serve on each of our board committees (other than our audit committee), for so long as TPG or Intel, as applicable, has the right to designate a director for nomination, subject to applicable laws and Exchange regulations.

Audit Committee

Following this offering, our audit committee will be composed of , with serving as chairperson of the committee. We anticipate that, prior to the completion of this offering, our audit committee will determine that meets the definition of “independent director” under the rules of the Exchange and under Rule 10A-3 under the Exchange Act. Within 90 days following the effective date of the registration statement of which this prospectus forms a part, we anticipate that the audit committee will consist of a majority of independent directors, and within one year following the effective date of the registration statement of which this prospectus forms a part, the audit committee will consist exclusively of independent directors. Our board of directors has determined that is an “audit committee financial expert” within the meaning of the SEC’s regulations and applicable listing standards of the Exchange. The audit committee’s responsibilities upon completion of this offering will include:

- appointing, approving the compensation of, and assessing the qualifications, performance, and independence of our independent registered public accounting firm;
- pre-approving audit and permissible non-audit services, and the terms of such services, to be provided by our independent registered public accounting firm;
- reviewing the audit plan with the independent registered public accounting firm and members of management responsible for preparing our financial statements;
- reviewing and discussing with management and the independent registered public accounting firm our annual and quarterly financial statements and related disclosures as well as critical accounting policies and practices used by us;
- reviewing the adequacy of our internal control over financial reporting;
- reviewing all related person transactions for potential conflict of interest situations and approving all such transactions;
• establishing policies and procedures for the receipt and retention of accounting-related complaints and concerns;
• recommending, based upon the audit committee’s review and discussions with management and the independent registered public accounting firm, the inclusion of our audited financial statements in our Annual Report on Form 10-K;
• reviewing and assessing the adequacy of the committee charter and submitting any changes to the board of directors for approval;
• monitoring our compliance with legal and regulatory requirements as they relate to our financial statements and accounting matters;
• preparing the audit committee report required by the rules of the SEC to be included in our annual proxy statement; and
• reviewing and discussing with management and our independent registered public accounting firm our earnings releases.

Leadership Development and Compensation Committee
Following this offering, our leadership development and compensation committee will be composed of , with , serving as chairperson of the committee. The leadership development and compensation committee’s responsibilities upon completion of this offering will include:

• determining and approving the compensation of our chief executive officer, including annually reviewing and approving corporate goals and objectives relevant to the compensation of our chief executive officer, and evaluating the performance of our chief executive officer in light of such corporate goals and objectives;
• reviewing and approving the corporate goals and objectives relevant to the compensation of our other executive officers;
• appointing, compensating, and overseeing the work of any compensation consultant, legal counsel or other advisor retained by the leadership development and compensation committee;
• conducting the independence assessment outlined in the rules of the Exchange with respect to any compensation consultant, legal counsel, or other advisor retained by the leadership development and compensation committee;
• reviewing and assessing the adequacy of the leadership development and committee charter and submitting any changes to the board of directors for approval;
• reviewing and establishing our overall management compensation philosophy and policy;
• overseeing and administering our equity compensation and similar plans;
• reviewing and approving our policies and procedures for the grant of equity-based awards and granting equity awards;
• reviewing and making recommendations to the board of directors with respect to director compensation; and
• reviewing and discussing with management the compensation discussion and analysis to be included in our annual proxy statement or Annual Report on Form 10-K.
Nominating and Corporate Governance Committee

Following this offering, our nominating and corporate governance committee will be composed of [members], with [chairperson] serving as chairperson of the committee. The nominating and corporate governance committee’s responsibilities upon completion of this offering will include:

- developing and recommending to the board of directors criteria for board and committee membership;
- establishing procedures for identifying and evaluating board of director candidates, including nominees recommended by stockholders;
- identifying individuals qualified to become members of the board of directors;
- recommending to the board of directors the persons to be nominated for election as directors and to each of the board’s committees;
- developing and recommending to the board of directors a set of corporate governance principles;
- articulating to each director what is expected, including reference to the corporate governance principles and directors’ duties and responsibilities;
- reviewing and recommending to the board of directors practices and policies with respect to directors;
- reviewing and recommending to the board of directors the functions, duties, and compositions of the committees of the board of directors;
- reviewing and assessing the adequacy of the committee charter and submitting any changes to the board of directors for approval;
- providing for new director orientation and continuing education for existing directors on a periodic basis;
- performing an evaluation of the performance of the committee; and
- overseeing the evaluation of the board of directors and management.

Board Oversight of Risk Management

While the full board of directors has the ultimate oversight responsibility for the risk management process, its committees oversee risk in certain specified areas. In particular, our audit committee oversees management of enterprise risks as well as financial risks and is responsible for overseeing the review and approval of related party transactions. Our leadership development and compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements and the incentives created by the compensation awards it administers. Our nominating and corporate governance committee oversees risks associated with corporate governance, business conduct and ethics. Pursuant to the board of directors’ instruction, management regularly reports on applicable risks to the relevant committee or the full board of directors, as appropriate, with additional review or reporting on risks conducted as needed or as requested by the board of directors and its committees.

Leadership Development and Compensation Committee Interlocks and Insider Participation

None of the members of our leadership development and compensation committee has at any time during the prior three years been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or leadership development and compensation committee of any entity that has one or more executive officers serving on our board of directors or leadership development and compensation committee. For a description of transactions between us and members of our leadership development and compensation committee and affiliates of such members, see “Certain Relationships and Related Party Transactions.”
Code of Ethics

We have adopted a code of ethics that applies to all of our employees, officers and directors. Upon the closing of this offering, our code of ethics will be available on our website. We intend to disclose any amendments to our code of ethics, or any waivers of their requirements, on our website. Information contained on our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website to be part of this prospectus or in deciding to purchase shares of our Class A common stock.
EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

This Compensation Discussion and Analysis focuses on the compensation we provide to our executive officers listed in the “Summary Compensation Table for Fiscal 2019” (our “named executive officers”) and should be read in conjunction with the accompanying tables and text below. In accordance with SEC executive compensation disclosure rules, this Compensation Discussion and Analysis focuses on our compensation decisions with respect to our named executive officers for fiscal 2019, which were made while we have been privately owned. In preparing to become a public company, with the assistance of our independent compensation consultant, we have reviewed and plan to continue to review all elements of our executive compensation program. We expect that our executive compensation program and compensation governance practices will evolve to reflect our status as a newly publicly-traded company, while still supporting our overall business and compensation objectives. In this Compensation Discussion and Analysis and the accompanying tables and narratives, references to “our board” and “our compensation committee” refer to the board of managers of Foundation Technology Worldwide LLC and its compensation committee for all periods prior to the restructuring undertaken in connection with this offering and to the board of directors of the Company and its leadership development and compensation committee for all periods following the restructuring.

Our named executive officers for fiscal 2019 are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
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<tbody>
<tr>
<td>Christopher Young(1)</td>
<td>Former Chief Executive Officer</td>
</tr>
<tr>
<td>Michael Berry(2)</td>
<td>Former Executive Vice President, Chief Financial Officer</td>
</tr>
<tr>
<td>John Giamatteo(3)</td>
<td>Former President and Chief Revenue Officer, Enterprise Business Group</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>Executive Vice President, Consumer Business Group</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>Executive Vice President and Chief Product Officer, Enterprise Business Group</td>
</tr>
</tbody>
</table>

(1) Mr. Young’s employment with us terminated on February 3, 2020.
(2) Mr. Berry’s employment with us terminated on March 13, 2020.
(3) Mr. Giamatteo’s employment with us terminated on January 10, 2020.

Fiscal 2020 Senior Executive Hires

Earlier in fiscal 2020, we welcomed Peter Leav (whose employment with us started on February 3, 2020) as our new President and Chief Executive Officer, Venkat Bhamidipati (whose employment with us started on September 2, 2020) as our new Executive Vice President and Chief Financial Officer, and Lynne Doherty McDonald (whose employment with us started on May 4, 2020) as our new Executive Vice President, Global Sales and Marketing, Enterprise Business Group. Since they were hired, each executive has been an instrumental part of McAfee’s fiscal 2020 business plan and our efforts to help our customers navigate their rapidly changing digital behaviors and the increasing risk posed by the current environment. In recruiting Mr. Leav, Mr. Bhamidipati, and Ms. Doherty McDonald, McAfee and our compensation committee were guided by the same executive compensation philosophy as described below for fiscal 2019 and negotiated the level of their compensation and the terms of their executive compensation arrangements, which include an employment agreement (in the cases of Mr. Leav and Mr. Bhamidipati) and an offer letter (in the case of Ms. Doherty McDonald), as well as MIU and restricted equity unit (“RSU”) grants, taking into account market compensation level determined based on prior input from our independent compensation consultants and the experience of members of our compensation committee, internal pay equity considerations and the circumstances of our executives’ hirings, including their prior roles and compensation in those roles. The employment agreement, RSU agreement and MIU agreement for Mr. Leav are filed as exhibits to this registration statement. The employment agreement for Mr. Bhamidipati and the offer letter for Ms. Doherty McDonald are also filed as an exhibit to this registration statement.
In addition, following the departure of Mr. Berry, our former Chief Financial Officer, and prior to Mr. Bhamidipati’s start date, Ashish Agarwal (our Senior Vice President, Strategy and Corporate Development) served as our interim Chief Financial Officer from March 13, 2020 until September 2, 2020.

Each of Mr. Leav, Ms. Doherty McDonald, and Mr. Agarwal has also made a personal cash investment in Class A Units of Foundation Technology Worldwide LLC since his or her start date.

Industry Background and Competitive Environment

Industry Background

McAfee has been a pioneer and leader in protecting consumers, enterprises, and governments from cyberattacks for more than 30 years with integrated security, privacy and trust solutions. We built our platform through a deep, rich history of innovation and have established a leading global brand. Whether we are securing the digital experience of a consumer who is increasingly living life online, or defending many of the world’s largest enterprises and governments from sophisticated attacks and nation-state threats, McAfee is singularly committed to one mission: to protect all things digital that matter through leading-edge cybersecurity. We live in a digital world. Consumers are increasingly moving their daily lives online, interacting through multiple devices, networks and platforms, and leveraging technology in nearly every aspect of their lives. This shift is most noticeable in the way individuals are working, banking, socializing, consuming, and paying, leading to a proliferation of digital touchpoints and applications. Remote work and increasing work from home arrangements are driving a pronounced convergence of work and personal life. While people expect effective and frictionless security at work and in their personal lives, this lifestyle shift has been accompanied by a more challenging threat landscape and an increase in points of vulnerability, risking individuals’ privacy, identity, data and other vital resources. Similarly, enterprises embracing employee mobility, work from home strategies, bring your own device, and greater cloud adoption have seen the attack surface broaden and network perimeter dissolve. These drivers have led to a rapid increase in the number of workloads across endpoints and industries, making it challenging for enterprises to monitor and protect all of their workloads and applications and increasing the importance of the consumer in making security decisions for their converged digital lives.

Competitive Hiring Environment

Cybersecurity is a fast-paced and competitive industry experiencing a widely-reported shortage of skilled talent and leadership in the face of high and increasing demand. We compete for executive talent with many other cybersecurity companies, large and small. Some of our competitors are publicly-traded and are therefore able to offer equity compensation to their executives that is more liquid than the equity compensation we offer to our executives. Additionally, we compete for executive talent in geographic areas, such as Silicon Valley, and in related industries, such as software development and artificial intelligence, in which talented executives are in high demand, resulting in an increasingly competitive environment for attracting and retaining executive talent. Given the unique skillset required of our executive team as well as competition from industries beyond cybersecurity for our executives, we offer competitive compensation that accounts not only for these external factors but also for our status as a privately-held company.

Philosophy and Objectives of our Executive Compensation Program

Our global compensation philosophy is to compensate employees competitively, fairly and based on performance to incentivize actions that support achievement of our business objectives and equityholder value appreciation. To that end, we are constantly monitoring the integrity and functionality of our executive compensation program and refining it as we deem appropriate. Equitable pay practices are critical to our culture. During 2019, we continued our cybersecurity industry-leading efforts to review and bring about global pay parity, which we define as fair and equal pay for employees in the same job, level, and location, controlling for pay differentiators such as performance, tenure and experience. As part of our ongoing review of pay practices, we have engaged in extensive audits covering 45 countries and nearly 7,000 employees because we believe that every employee should be compensated fairly and equally for his or her individual contribution to the company.
Consistent with our global compensation philosophy, our goal has been to implement an executive compensation program that drives results and that is built upon our long-standing executive compensation philosophy and objectives, as outlined below:

- **Attract and retain talent**—structure executive compensation to be market competitive to attract and retain top talent and high potential employees;
- **Pay-for-performance**—empower, reward, and incentivize high performing employees for achieving, key financial, strategic, and operational goals both over the near and long-term; and
- **Align executive goals and compensation with equityholder interests**—link compensation to measurable results tied to equityholder valuation appreciation.

### Key Features of Our Executive Compensation Program

Our executive compensation program includes the following practices, each of which our compensation committee believes reinforces our executive compensation philosophy and objectives:

**We have followed good governance practices in our executive compensation practices by:**

- Providing a significant percentage of target annual cash compensation delivered in the form of variable compensation tied to performance
- Using simple and common performance measures that we believe are core drivers of the Company’s operational performance and equityholder value appreciation
- Emphasizing future pay opportunity through equity awards, which represent a significant component of compensation
- Using multi-year vesting for equity compensation, which requires our executive officers to hold sufficient unvested equity value to provide a meaningful retention incentive
- Using comparable market data to assess the competitive market position of our executive compensation program
- Engaging independent outside consulting firms to validate market practices and trends for our industry
- Not providing tax gross-ups on change in control benefits
- Not providing excessive executive perquisites
- Not offering a defined benefit pension plan for our executives
- Not repricing profits interests or other “appreciation” awards

### Decision-making Responsibility

Our compensation committee oversees our executive compensation program. All members of our compensation committee are employees of one of our equityholders (or their affiliates): TPG and Intel. As employees of our equityholders, we believe that each member brings a perspective aligned with our equityholders regarding executive compensation determinations.

Our compensation committee considers the views and recommendations of management, in particular those of our Chief Executive Officer and our Chief People Officer, in making decisions regarding executive compensation. Among other things, our Chief Executive Officer makes recommendations about executive performance, annual base salary levels, annual incentive targets, and payout levels and long-term incentive grants for our named executive officers (other than for himself).
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During fiscal 2019, our compensation committee convened three meetings in which executive compensation matters were discussed and acted by written consent on three other occasions. Pursuant to the terms of our compensation committee charter as in effect prior to February 2019, our compensation committee did not have exclusive authority to approve decisions regarding key executive compensation matters. As a result, until that time, our compensation committee made recommendations regarding key executive compensation decisions to our board, which considered and approved those determinations during its regular quarterly meetings or through unanimous written consent. In February 2019, our board approved changes to our compensation committee charter that generally give our compensation committee greater authority to approve certain executive compensation decisions without requiring approval of the full board. After that time, our compensation committee generally acted on executive compensation matters independently.

Compensation Setting Process

Independent Compensation Consultants

In fiscal 2019, we continued to engage Compensia, a nationally known compensation consulting firm, to serve as an independent advisor to our compensation committee on executive compensation matters. In late 2018, Compensia assisted our compensation committee with an evaluation of the competitiveness of the Company’s existing executive compensation program and assisted in developing recommendations regarding executive compensation adjustments for fiscal 2019.

In fiscal 2018, we separately engaged Radford, a division of Aon plc, which is a nationally known professional services firm that specializes in collecting and analyzing compensation information, to provide input to our compensation committee on the design of the Company’s long-term incentive program.

Market Comparison

For fiscal 2019, our compensation committee considered market pay practices when setting compensation for executive officers. Our compensation committee uses market data to assess the overall competitiveness and reasonableness of the compensation elements and the Company’s overall executive compensation program. As a starting point, we assess the competitive market of our peer group on each of base salary and target annual cash incentives for our executive officers, which when combined would result in a target total direct compensation approximating the 50th percentile to 75th percentile of our peer group, though from time to time other factors described below may result in compensation elements falling outside these ranges. In assessing the competitive market, we use survey data from the peer group noted below as the primary market data source, with proxy peer group data providing a supplemental viewpoint.

Our compensation committee believes that compensation decisions are complex and require a deliberate review of Company performance, market compensation levels, and other factors it deems relevant in a given situation. Accordingly, while our compensation committee uses the above market percentiles as a guiding point, the factors that may influence the amount of compensation awarded include, but are not limited to:

- Market competition for a particular position;
- Internal pay equity considerations;
- Experience and past performance inside or outside the Company;
- Role and responsibilities within the Company;
- Long-term potential with the Company;
- Personal performance and contributions; and
- Business conditions.
Our compensation committee believes that the Company’s executive compensation peer group should reflect the markets in which the Company competes for business and executive talent. Accordingly, the Company’s peer group consists of peer companies that we believe are our most direct cybersecurity and business competitors, and software companies that are roughly comparable to the Company in terms of headcount, revenue, and enterprise value. We believe these comparisons provide us with a valuable window into the executive pay practices of companies similar to us, and we seek to use information about their compensation levels whenever available to us. As a result of these similarities, we view the companies in the custom peer group below as those that are mostly likely to compete with us for executive talent. We do not pre-screen members of our peer group for their compensation levels or practices. Our compensation committee, together with Compensia and our management team, expects to periodically re-evaluate and revise our selection criteria and list of peer companies, as it deems appropriate.

After soliciting input from Compensia, our compensation committee selected the following peer companies for purposes of our fiscal 2018 executive compensation program, which we continued to use as our peer group during fiscal 2019:

<table>
<thead>
<tr>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA Technologies(1)</td>
</tr>
<tr>
<td>Citrix Systems</td>
</tr>
<tr>
<td>ForeScout Technologies</td>
</tr>
<tr>
<td>Open Text</td>
</tr>
<tr>
<td>Red Hat</td>
</tr>
<tr>
<td>Symantec</td>
</tr>
<tr>
<td>Cadence Design Systems</td>
</tr>
<tr>
<td>F5 Networks</td>
</tr>
<tr>
<td>Fortinet</td>
</tr>
<tr>
<td>Palo Alto Networks</td>
</tr>
<tr>
<td>ServiceNow</td>
</tr>
<tr>
<td>Synopsys</td>
</tr>
<tr>
<td>Carbon Black</td>
</tr>
<tr>
<td>FireEye</td>
</tr>
<tr>
<td>Juniper Networks</td>
</tr>
<tr>
<td>Proofpoint</td>
</tr>
<tr>
<td>Splunk</td>
</tr>
</tbody>
</table>

(1) The compensation information used for benchmarking purposes regarding CA Technologies related to the period prior to its November 5, 2018 acquisition by Broadcom Inc.

Elements of Compensation

Consistent with our pay-for-performance philosophy and executive compensation program objectives described above, in determining the fiscal 2019 adjustments to executive compensation levels discussed below, our compensation committee considered each named executive officer’s role and responsibilities, personal performance and contributions, business performance and conditions, overall job market conditions, internal pay equity, and competitive market data.

The following is a discussion of the primary elements of the compensation for each of our named executive officers.

**Annual Base Salary**

Annual base salary is one element of the cash compensation that we provide to our named executive officers and is determined by the core contributions each executive is expected to make and the specific requirements for each named executive officer’s role. As noted above, we generally consider how a named executive officer’s base salary contributes to their total target direct compensation, and its resulting positioning as compared to our peer group. Under this construct, we place more emphasis on performance-linked elements of total direct compensation as we believe annual incentive pay provides a stronger connection between pay and performance.

In connection with our annual compensation review for fiscal 2019, we reviewed the annual base salaries of the named executive officers. As part of that review, our former Chief Executive Officer, in collaboration with our Chief People Officer, made recommendations to our compensation committee regarding annual base salary levels of our named executive officers (other than himself) and any adjustments. Recommendations were based
on market considerations (including base salary levels relative to our peers described above) and a holistic assessment of the named executive officer’s performance over the prior year. Our compensation committee followed a similar process in determining our Chief Executive Officer’s annual base salary. As a result of this review, our compensation committee recommended, and our board approved, an increase in Mr. Young’s annual base salary in fiscal 2019 from $725,000 to $800,000 and in Mr. Berry’s annual base salary in fiscal 2019 from $475,000 to $500,000, in each case, effective January 1, 2019, to further align their compensation with the competitive market. As described below, Mr. Berry’s annual base salary was further increased to $600,000 effective August 16, 2019. In connection with our annual review, no changes were made to the annual base salaries of Messrs. Giamatteo, Kulkarni, or Hicks. Mr. Kulkarni and Mr. Hicks both joined us in the second half of fiscal 2018 and their annual base salaries were determined at that time in a similar manner and with special consideration given to the need to secure their hires in light of their preexisting compensation arrangements, alternative employment opportunities, the competitive market, and internal pay equity.

Our compensation committee and board may also adjust annual base salaries of our named executive officers at other times during the year in connection with promotions, increased responsibilities or to maintain market competitive compensation levels but did not do so in fiscal 2019 (except with respect to Mr. Berry, as described above). The table below sets forth the 2019 annualized base salary level for each of our named executive officers as of the end of fiscal 2019:

<table>
<thead>
<tr>
<th>Named Executive Officer</th>
<th>2019 Base Salary at Year-End</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>$800,000</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>$600,000</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>$650,000</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>$650,000</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

Annual Incentives

Our executive compensation program ties a substantial portion of the cash compensation that our executives are eligible to receive directly to the Company’s performance. We believe our annual incentive plan (“AIP”) is an integral component of our overall executive compensation program because, as a private company during fiscal 2019, our equity awards were illiquid. We also believe that a competitive incentive program is essential to attracting, retaining, and motivating talented leaders. Our AIP is linked to the achievement of certain individual and company goals that we believe are important for our short-term and long-term success and are key to driving increases in the value of the Company. Payouts under our AIP are based on the Company’s performance and our executives’ performance against Company and executive goals, respectively, with the AIP funding only if the Company’s performance exceeds threshold goals relating to annual gross revenues, annual business segment bookings, and annual adjusted EBITDA, as described below.

Setting the Annual Incentive Target Opportunity

Each of our named executive officers participates in our AIP and is eligible to receive a cash-based annual incentive at a target level that is based on a percentage of the officer’s annual base salary. These annual incentive targets are prorated for any changes in annual base salary during the fiscal year and for any partial years of service. After reviewing our named executive officers’ total on-target earning opportunities, Mr. Young’s annual incentive target for fiscal 2019 was increased from $880,000 to $1,200,000 and Mr. Berry’s annual incentive target was increased from $475,000 to $500,000. As described below, Mr. Berry’s annual incentive target was further increased to $650,000 effective August 16, 2019. No adjustment was made to the AIP target awards for Messrs. Giamatteo, Hicks, or Kulkarni. In determining the adjustments for Messrs. Young and Berry, our compensation committee considered the competitive market, internal pay equity, and the roles and
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responsibilities for each position. For fiscal 2019, our named executive officers’ annual incentive target opportunities were as follows:

<table>
<thead>
<tr>
<th>Named Executive Officer</th>
<th>Target Annual Incentive (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>$556,727</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>$850,000</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>$750,000</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

(1) Amounts in this column reflect the annual incentive targets for fiscal 2019. Mr. Berry’s annual incentive target reflects a blended target based on the mid-year change in his annual incentive target described above.

AIP Pool Funding and Attainment

For fiscal 2019, our compensation committee and board established an AIP pool for all participants in our AIP, including our named executive officers, and the performance metrics and goals for our fiscal 2019 AIP. The initial target funding for this pool was equal to the aggregate amount that would be payable to all AIP participants if each participant received his or her full annual incentive target, subject to achievement of financial metrics, adjustment for new hires, changes in status, and changes in participant compensation as provided in the AIP. For fiscal 2019, the AIP pool was funded based on achievement of an annual adjusted EBITDA target (50% weighting), annual business segment bookings targets (30% weighting) and annual gross revenue target (20% weighting), calculated on a constant currency basis (i.e., calculated assuming no changes in the currency exchange rates from budgeted currency exchange rates). For annual business segment bookings, AIP participants are assigned to the Consumer business segment, the Enterprise business segment or McAfee overall (consisting of both the Consumer and Enterprise business segments), depending on the participant’s role within McAfee.

Under the AIP design, each of the minimum annual gross revenue, minimum annual business segment bookings and minimum annual adjusted EBITDA goals had to be achieved for any portion of the AIP pool to be funded. Our compensation committee selected annual gross revenue, annual business segment bookings and annual adjusted EBITDA as the AIP targets as each measure was viewed as supportive of the Company’s growth imperatives and long-term equityholder value appreciation and with a view toward balancing financial metrics to capture both top-line and bottom-line growth. Our compensation committee introduced the annual business segment bookings component to the AIP and reduced the weighting of annual gross revenue from 50% for fiscal 2018 to 20% for fiscal 2019 in order to better align the AIP for senior executives associated with one of our business segments (i.e., Consumer or Enterprise) with other cash bonus programs that apply to employees in those units. Each of the fiscal 2019 AIP metrics is described below.

<table>
<thead>
<tr>
<th>Financial Metric</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Adjusted EBITDA</td>
<td>Annual Adjusted EBITDA is a non-GAAP financial measure, which is defined as net income (loss), excluding the impact of amortization of intangible assets, equity-based compensation expense, interest expense and other, net, provision for income tax expense, foreign exchange (gain) loss, net, and other costs that we do not believe are reflective of our ongoing operations, and excluding the impact of depreciation expense and other non-operating costs (as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations”), and further adjusted to eliminate the impact of purchase accounting, capital expenditures; capitalized software expenses and other revenue that we not believe is reflective our ongoing operations.</td>
</tr>
<tr>
<td>Annual Business Segment Bookings</td>
<td>Annual business segment bookings are a non-GAAP financial measure, which are defined as contractual commitments for McAfee to provide subscription and/or professional services to a customer over a contractual term.</td>
</tr>
</tbody>
</table>
Annual Gross Revenue is a non-GAAP financial measure that represents our revenue recognized from contracts with customers before reductions to revenue for returns reserves and consideration to customers, including rebates, revenue share, product placement fees and marketing development funds.

The funding of the AIP pool increases or decreases for achievement above or below the target achievement level, subject to minimum achievement levels of 80% of the annual adjusted EBITDA target, 80% of annual business segment bookings and 90% of the annual gross revenue target. After all financial metrics are compared to relevant targets (and subject to these minimums), they are weighted as described above and the three weighted metrics are added together. The funding of the AIP pool is then determined by applying a slope of 5x to the resulting percentage (i.e., subject to thresholds described above, for each percentage above or below 100%, the AIP pool funding increases or decreases by 5%), subject to a maximum achievement level of 110% (which results in funding of the AIP pool at 150% of its target level).

Before determining the final AIP pool funding level, our compensation committee and board, with input from our Chief Executive Officer, may then adjust the aggregate pool funding level based upon a combination of Company performance as well as our board’s evaluation of a variety of subjective and objective Company performance metrics. For fiscal 2019, our compensation committee and our board did not adjust the achievement levels with respect to any goal or the aggregate pool funding. Our fiscal 2019 company performance goals, and our levels of achievement of those goals, were as follows:

<table>
<thead>
<tr>
<th>Performance Metric</th>
<th>Goal</th>
<th>Fiscal 2019 Actual</th>
<th>Percentage Achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Gross Revenue(1)</td>
<td>$2,784,546,510</td>
<td>$2,833,142,575</td>
<td>101.7%</td>
</tr>
<tr>
<td>Annual Adjusted EBITDA(1)</td>
<td>$643,903,288</td>
<td>$793,916,727</td>
<td>123.3%</td>
</tr>
<tr>
<td>Annual Business Segment Bookings (McAfee corporate)(1)(2)</td>
<td>$3,044,010,261</td>
<td>$2,982,607,293</td>
<td>98.0%</td>
</tr>
<tr>
<td>Annual Business Segment Bookings (Consumer business segment)(1)(3)</td>
<td>$1,484,024,341</td>
<td>$1,516,623,528</td>
<td>102.2%</td>
</tr>
<tr>
<td>Annual Business Segment Bookings (Enterprise business segment)(1)(4)</td>
<td>$1,559,985,920</td>
<td>$1,465,983,765</td>
<td>94.0%</td>
</tr>
</tbody>
</table>

(1) Calculated for AIP purposes only.
(2) Relevant for Messrs. Young and Berry.
(3) Relevant for Mr. Hicks.

After the AIP pool has been funded, individual incentives for each of our named executive officers were then determined by applying the relevant AIP pool funding percentage for the named executive officer to his individual incentive target, with 50% of the funded amount paid to the named executive officer based on achievement of the financial targets described above (including the applicable annual business segment bookings measure) and the remaining 50% of the funded amount paid to him based on a discretionary assessment of his individual performance relative to predetermined operational and strategic goals. Based on individual performance, a named executive officer was eligible to earn 50% to 150% of the total funded AIP amount.
For our named executive officers, individual goals related to our financial and operational performance, as well as adding new portfolio offerings, building out existing offerings, sales transformation, consumer initiatives, business optimization and driving a diverse and inclusive culture. These operational and strategic goals were designed to be challenging but achievable with strong management performance. The process of determining individual AIP payouts is illustrated by the following:

Following the end of the year, each of our named executive officers assessed his performance against his individual performance goals for the fiscal year. Following the end of fiscal 2019, Mr. Leav, our President and Chief Executive Officer reviewed these self-assessments and the achievement of each named executive officer (other than Mr. Young) and recommended an attainment level for the portion of each named executive officer’s annual incentive tied to individual performance. After reviewing Mr. Leav’s recommendations and these self-assessments, our compensation committee recommended individual performance factors with respect to the portion of the AIP based on individual performance ranging from 0% to 125% of the discretionary employee performance factor for each of our named executive officers. Based on our compensation committee’s recommendation, our board approved the following AIP payouts:

<table>
<thead>
<tr>
<th>Named Executive Officer</th>
<th>Actual Payout ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young(1)</td>
<td>$ 1,800,000</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>$ 939,478</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>$ 637,504</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>$ 1,265,684</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>$ 1,012,500</td>
</tr>
</tbody>
</table>

(1) In connection with his termination of employment with McAfee, we agreed to pay Mr. Young’s 2019 AIP payout by applying 100% achievement to his individual performance goals.

**Long-Term Incentives**

Our board believes that members of senior management should hold a personally significant interest in the equity of the Company to align their interests and the interests of our equityholders. As described below, in furtherance of this philosophy, members of senior management were given the opportunity to invest in the Company and the Company established a profits interest program for senior management.
Profits interest programs are commonly issued by private equity-backed companies and allow participants to share in increases in the equity value of the Company. As described further below, since our separation from Intel, our profits interest program has formed the core of our long-term incentive program. However, we have supplemented profits interests awards with other award types and equity opportunities, including RSUs, and adjusted our overall long-term incentive program over time, in response to retention, internal equity and recruiting considerations. Consistent with practices among similarly situated private equity financed companies, executive officers are generally provided with one or more initial long-term incentive grants upon hire. This initial grant (or these grants) are generally expected to cover a multi-year period; however, executives may be provided an additional long-term incentive grant or grants upon promotion, to maintain market competitiveness, to reward outstanding performance, or to provide for internal parity among similarly-situated executives at the Company. As a result of these significant grants, long-term incentives are the most heavily weighted component of our executive compensation program for named executive officers. This reflects our focus on aligning executive interests with those of our equityholders, supporting a pay-for-performance philosophy, and encouraging executives to take actions that we believe will grow the value of the Company over time. We also believe that long-term equity awards serve an important retentive function and are essential to attract and retain talented leaders in the competitive market in which we operate.

As noted above, we grant larger, up-front equity awards to our executives with long-term vesting schedules. We also provide equity investment opportunities for our senior executives. Because of this, we believe awards we made in the 2017 Successor period and fiscal 2018, as well as our equity investment opportunities, provide important context for understanding our fiscal 2019 equity award practices related to named executives officers.

Investment in the Company

In connection with our separation from Intel in 2017, each of our named executive officers who was then employed was offered the opportunity to purchase Class A Units of Foundation Technology Worldwide LLC at fair market value (which, at the time, was equal to the price paid by our Sponsors). Following the separation from Intel, we have extended a similar investment opportunity to new senior executives. Accordingly, each of the named executive officers have been given this investment opportunity, with Messrs. Young, Berry, and Giamatteo having made a direct investment in our equity. We believe that offering our named executive officers the opportunity to invest in our Company aligns their interests with the interests of our other equityholders, leads them to act as “employee owners” of our Company and allows them to benefit from increases in value that they helped to create. Because the Class A Units purchased by our named executive officers represent investment of personal funds by the executives, these units are not subject to a vesting requirement or reflected in the executive compensation tables below.

2017 Successor period—Initial Equity Awards

In connection with our separation from Intel, we adopted our 2017 Management Incentive Plan (“2017 Plan”). Our 2017 Plan permits us to grant several types of awards, but our grants to named executive officers have generally been in the form of MIUs of Foundation Technology Worldwide LLC, which are appreciation-based awards that are intended to be characterized as profits interests for federal income tax purposes, and RSUs that are generally payable in Class A Units of Foundation Technology Worldwide LLC. MIUs and Class A Units each represent an equity interest in Foundation Technology Worldwide LLC; however, the MIU grants have what is called a “return threshold” based on the value assigned to a Class A Unit at the time of the MIU grant. Much like a stock option shares in equity appreciation above an exercise price, the MIUs only share in equity appreciation above the return threshold. This places the MIU grants in a secondary position to the Class A Units in that for any event in which the equity is valued and paid out, holders of the MIU grants are paid only if an amount at least equal to the return threshold has first been allocated to the Class A Units. The Class A Units and the MIU grants share equally in valuation amounts, if any, above the return threshold.
Fiscal 2018 Equity Awards

In fiscal 2018, our compensation committee reviewed the structure and effectiveness of our equity compensation program, taking into account our compensation philosophy, the goals of our executive compensation program, our historic and anticipated burn rate, levels of executive equity ownership and how those levels relate to our peer group. As a private equity-backed company, our equity compensation program is not readily comparable to programs of our public peers because both the timing and form of our equity awards are different than those of our peers.

In assessing the competitiveness of our equity compensation program in fiscal 2018, our compensation committee, with input from Compensia, estimated the four-year value of long-term equity awards granted by our peer companies by position, assuming one larger “new hire” grant (which generally was valued at one and one-half times the value of the annual awards) and annual awards thereafter, and taking into account only the portion of the annual awards that are scheduled to vest during this four-year period. Our compensation committee then compared the value determined by using this methodology to the value of the equity awards held by our executives holding the same or similar positions over this same time period, based on the projected value of our equity awards at the end of the four-year period. Using this methodology, we generally aimed to provide our executives with target payouts from their equity awards that would deliver two and a half to three times the value of equity awards granted at the 60th percentile of our custom peer group over a four-year period (“peer group multiple”).

In the 2017 Successor period, other than the Intel replacement awards discussed above, our grants under our long-term incentive program to our most senior executives were in the form of MIUs. In fiscal 2018, we also reassessed the mix of award types used under our executive compensation program based on analysis provided to our compensation committee by Radford regarding the equity grant practices of our peers. As a result of that analysis, following the fiscal 2018 annual grants, we began providing a mix of MIUs and RSUs to our executive officers, targeting that 75% of target value would be provided by MIUs, with the remaining 25% of the target value provided in the form of RSUs.

In fiscal 2018, we granted equity awards to Messrs. Berry and Giamatteo in the form of additional MIUs to further align their incentive equity ownership with our peer group multiple and to encourage retention. In addition, in connection with his promotion in June 2018, we granted Mr. Giamatteo RSUs and additional MIUs to reflect the competitive market for compensation for his position as well as to recognize Mr. Giamatteo’s increased roles and responsibilities within the Company. In connection with their hires, Messrs. Hicks and Kulkarni were granted MIUs and RSUs. In determining the size and form of these awards, our compensation committee considered the peer data described above, each executive’s targeted position relative to the market and our other executives, as well as, for Messrs. Hicks and Kulkarni, their preexisting compensation arrangements and alternative employment opportunities. The equity awards granted to our named executive officers during fiscal 2018 are summarized below:

<table>
<thead>
<tr>
<th>Named Executive Officer</th>
<th>MIUs</th>
<th>RSUs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Berry (Annual Grant)</td>
<td>73,548</td>
<td>—</td>
</tr>
<tr>
<td>John Giamatteo (Annual Grant)</td>
<td>124,110</td>
<td>—</td>
</tr>
<tr>
<td>John Giamatteo (Promotion Grant)</td>
<td>114,822</td>
<td>69,140</td>
</tr>
<tr>
<td>Terry Hicks (New Hire Grant)</td>
<td>397,457</td>
<td>75,000</td>
</tr>
<tr>
<td>Ashutosh Kulkarni (New Hire Grant)</td>
<td>311,341</td>
<td>58,750</td>
</tr>
</tbody>
</table>

(1) Granted in fiscal 2018 in connection with the fiscal 2019 annual compensation review.
(2) Granted in fiscal 2018 in connection with the fiscal 2018 annual compensation review.

The awards granted to our named executive officers in fiscal 2018 generally vest 50% based on continued employment over four years and 50% based on achievement of specified investment returns, while the promotion RSU grant to Mr. Giamatteo vests based on his continued employment over three years.
Fiscal 2019 Equity Awards

In fiscal 2019, we granted RSUs to Messrs. Berry, Hicks, and Kulkarni in connection with our annual executive compensation review process. Consistent with our compensation philosophy and processes described above, the compensation committee made these awards based on its review of compensation practices among our peer companies and the executives’ performance in fiscal 2019. In addition, RSUs were granted to Messrs. Giamatteo, Hicks, and Kulkarni as part of an adjustment related to a distribution made to our equityholders. The grant of additional RSUs maintained the same value of the holder’s aggregate RSU holdings as of immediately prior to and immediately following the distribution.

The equity awards granted to our named executive officers during fiscal 2019 are summarized below:

<table>
<thead>
<tr>
<th>Named Executive Officer</th>
<th>RSUs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Berry (Success Grant)</td>
<td>72,318</td>
</tr>
<tr>
<td>John Giamatteo (Distribution Adjustment Grant)</td>
<td>10,842</td>
</tr>
<tr>
<td>Terry Hicks (Annual Grant)</td>
<td>22,222</td>
</tr>
<tr>
<td>Terry Hicks (Distribution Adjustment Grant)</td>
<td>14,702</td>
</tr>
<tr>
<td>Ashutosh Kulkarni (Annual Grant)</td>
<td>44,444</td>
</tr>
<tr>
<td>Ashutosh Kulkarni (Distribution Adjustment Grant)</td>
<td>11,516</td>
</tr>
</tbody>
</table>

(1) In August 2019, as a reflection of Mr. Berry’s leadership and contributions to our financial success, Mr. Berry received the RSUs described above. Mr. Berry forfeited 63,279 of these RSUs upon his resignation.
(2) Reflects “make whole” RSU grants in connection with a distribution made to our equityholders during fiscal 2019.
(3) Granted in fiscal 2019 in connection with the fiscal 2020 annual compensation review.

Other than the “make whole” grants referenced above (which vest on the same basis as the awards to which they relate), the awards granted to our named executive officers in fiscal 2019 generally vest based on continued employment over four years.

Sign-On and Retention Bonuses

Our compensation committee may elect to award special bonuses as it deems appropriate for recruitment, retention, or incentive purposes. Our compensation committee determines the level of the bonuses as well as the specific terms based on its review of the competitive market, including compensation offered by competing employers, as well as compensation to be forfeited by the executive upon joining the Company.

During fiscal 2018, Mr. Giamatteo became eligible to receive retention bonuses totaling $1,500,000, payable in three $500,000 increments on June 1st in each of 2019, 2020 and 2021 if he remained in continuous service with us through the applicable payment date. In fiscal 2019, Mr. Giamatteo was paid $500,000 under this arrangement. Pursuant to the terms of his employment offer letter, in fiscal 2019, Mr. Kulkarni received two installments of his retention bonus: $1,000,000 in February 2019 and $800,000 in August 2019.

Employee Benefits

Employee health and wellbeing are of great importance to us, therefore ensuring our benefits remain highly competitive is a key focus for McAfee. We continuously review our benefit offerings with the goal of providing competitive benefits that have our employees and their unique family needs in mind. In addition to standard medical and retirement offerings, we offer on a global basis benefits like tuition reimbursement programs, domestic partner coverage and other family-friendly initiatives. We strive to maintain market competitive employee benefits to attract and retain top talent. Our named executive officers are eligible to participate in our broad-based employee benefit plans on the same terms as our other salaried U.S.-based employees, including our 401(k) retirement plan and our health and welfare benefit plans.
We also provide a nonqualified deferred compensation plan, the McAfee Nonqualified Deferred Compensation Plan (the “NQDC Plan”). The NQDC Plan provides a vehicle for additional deferred compensation with discretionary matching contributions from the Company. We believe that this type of plan is consistent with competitive pay practices and is an important element in attracting and retaining talent in a competitive market. Please see “—Nonqualified Deferred Compensation for Fiscal 2019” and accompanying narrative disclosure for further information regarding the NQDC Plan.

**Perquisites and Executive Benefits**

We offer limited perquisites and executive benefits to our named executive officers, including financial planning services and enhanced business travel benefits. While we generally weight executive compensation heavily toward total direct compensation (and particularly performance-based compensation), we believe the modest costs associated with these perquisites and benefits enhance executive retention.

**Employment Arrangements**

The Company generally executes an offer of employment before an executive joins the Company and, if applicable, will generally provide an updated offer of employment at the time of promotion. This offer describes the basic terms of the executive’s employment, including his or her start date, starting salary and bonus target. As discussed below, in some cases, the offer letters will include certain severance protections. The terms of the offer and promotion letters are based on competitive market data, including compensation that would be paid by a competing employer or forfeited upon separation from the executive’s prior employer. During fiscal 2019, in recognition of his leadership and contributions to our financial success, we entered a letter agreement with Mr. Berry pursuant to which his annual base salary was increased from $500,000 to $600,000 and his AIP target was increased to $650,000, in each case, effective August 16, 2019. This letter also entitled Mr. Berry to the RSU grant described above.

Employment agreements, offer letters and other letter agreements with our named executive officers that were entered into prior to fiscal 2019 remained in effect during fiscal 2019, and are described further below.

**Severance and Change in Control Arrangements**

As described in further detail under “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” below, we entered into employment or letter agreements with certain of our named executive officers that provide for severance benefits in the event their employment is terminated in certain circumstances and provide change in control benefits related to their equity awards. We believe that reasonable severance and change in control benefits are appropriate in certain circumstances to attract and retain top talent.

**2020 Employment Arrangements with Mr. Leav and Mr. Bhamidipati**

**Employment Agreement with Mr. Leav**

In connection with his commencement of employment as our President and Chief Executive Officer, Mr. Leav entered into an employment agreement that became effective on February 3, 2020. His employment agreement provides him with an annual base salary of $900,000, a target bonus equal to 150% of his annual base salary and an entitlement to participate in our employee benefit plans and programs made available to executive level employees. Pursuant to his employment agreement, he was also granted 468,614 RSUs and 312,409 MIUs with a return threshold of $34.57 per unit, and he purchased 14,464 Class A Units.

If we terminate Mr. Leav’s employment without cause (as defined in the employment agreement) or if Mr. Leav resigns for good reason (as defined in the employment agreement), in either case, other than within two years following a change in control, Mr. Leav would be entitled to: (i) a sum equal to one and one-half times his
then current annual base salary plus target bonus, payable over an 18-month period; (ii) any earned but unpaid annual bonus related to the completed fiscal year preceding the fiscal year in which termination of employment occurs, payable in accordance with regular payroll practices; (iii) an annual bonus for the year in which the termination date occurs, with payment based on actual performance during the year of termination, pro-rated to reflect the number of days during the bonus year in which Mr. Leav was employed by us, payable in accordance with regular payroll practices; and (iv) provided that Mr. Leav timely elects under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), a COBRA subsidy that, on an after-tax basis, is equal to the employer-paid portion of the premium equivalent for active employees who elect the same type of coverage during the 18-month period that follows his termination of employment (or, if earlier, the time at which he becomes eligible for group health coverage from another employer), payable on a monthly basis during such period. In the event such a termination of employment occurs during the two-year period following a change in control, Mr. Leav would be entitled to the same payments (subject to the same requirements), except that the severance multiplier would be two (rather than one and one-half) and would be paid over a 24-month period (instead of an 18-month period), and the COBRA subsidy would paid for up to 24 months (instead of 18 months). In addition, in each case, Mr. Leav would also be entitled to: (i) any earned but unpaid base salary accrued through the date of termination; (ii) unreimbursed business expenses; and (iii) employee benefits, if any, to which Mr. Leav or his dependents may be entitled under the employee benefit plans or programs of the Company ("Mr. Leav’s Accrued Rights").

Upon a termination of employment due to Mr. Leav’s death or disability, he would be entitled to: (i) Mr. Leav’s Accrued Rights; (ii) any earned but unpaid annual bonus related to the completed fiscal year preceding the fiscal year in which termination of employment occurs, payable in accordance with regular payroll practices; and (iii) an annual bonus for the year in which the termination date occurs, with payment based on actual performance during the year of termination, pro-rated to reflect the number of days during the bonus year in which Mr. Leav was employed by us, payable in accordance with regular payroll practices.

Upon a resignation without good reason or a termination for cause, Mr. Leav would be entitled only to Mr. Leav’s Accrued Rights.

Mr. Leav’s receipt of the severance payments described above (other than Mr. Leav’s Accrued Rights) are subject to his signing (and not revoking) a release of all claims against us and that he continue to comply with the limited liability company agreement of Foundation Technology Worldwide LLC, the 2017 Plan, the award agreements governing the awards granted under the 2017 Plan, his subscription agreement, and his employment agreement, the latter of which includes a covenant not to compete with us or to solicit our customers or employees during and, subject to certain limitations, for 18 months following his employment with us, as well as a perpetual confidentiality covenant.

In addition, any compensation paid to Mr. Leav is subject to recoupment to the extent required by law, the limited liability company agreement of Foundation Technology Worldwide LLC, the 2017 Plan, the award agreements governing the awards granted under the 2017 Plan, his subscription agreement, any clawback policy we adopt, or the requirements of the exchange on which the shares of an affiliate of ours are listed.

**Employment Agreement with Mr. Bhamidipati**

In connection with his commencement of employment, Mr. Bhamidipati entered into an employment agreement, effective September 2, 2020, that provides him with an annual base salary of $650,000, a target annual bonus equal to 100% of his annual base salary and an entitlement to participate in our employee benefit plans and programs made available to executive level employees. Pursuant to his employment agreement, he was also granted 200,000 RSUs and 200,000 MIUs with a return threshold of $34.57 per unit.

If we terminate Mr. Bhamidipati’s employment without cause (as defined in his employment agreement) or if Mr. Bhamidipati resigns for good reason (as defined in his employment agreement), Mr. Bhamidipati would be
entitled to: (i) a sum equal to his then current annual base salary plus target annual bonus, payable over a 12-month period and (ii) provided that Mr. Bhamidipati timely elects COBRA, monthly COBRA enrollment premiums that are equal to the employer-paid portion for active employees who elect the same type of coverage during the 12-month period that follows his termination of employment (or, if earlier, the time at which he becomes eligible for group health coverage from another employer), payable directly to our COBRA provider. In addition, if we terminate Mr. Bhamidipati’s employment without cause, Mr. Bhamidipati would be entitled to any earned but unpaid annual bonus related to (i) the fiscal year on which the termination date occurs if Mr. Bhamidipati was employed through the end of the third quarter of such fiscal year, or (ii) the completed fiscal year preceding the fiscal year in which termination of employment occurs, in each case based on actual performance for the applicable fiscal year and payable in accordance with regular payroll practices. In each case, Mr. Bhamidipati would also be entitled to: (i) any earned but unpaid base salary accrued through the date of termination; (ii) unreimbursed business expenses; (iii) any earned and unused vacation; and (iv) employee benefits, if any, to which Mr. Bhamidipati, Mr. Bhamidipati’s estate, or his dependents may be entitled under the employee benefit plans or programs of the Company (“Mr. Bhamidipati’s Accrued Rights”).

Upon a termination of employment due to Mr. Bhamidipati’s death or disability, a resignation without good reason, or a termination for cause, Mr. Bhamidipati would be entitled only to Mr. Bhamidipati’s Accrued Rights.

Mr. Bhamidipati’s receipt of the severance payments described above (other than Mr. Bhamidipati’s Accrued Rights) are subject to his signing (and not revoking) a release of all claims against us and that he continue to comply with the limited liability company agreement of Foundation Technology Worldwide LLC, the 2017 Plan, the award agreements governing the awards granted under the 2017 Plan, and the employment agreement, the latter of which includes a covenant not to compete with us or to solicit our customers or employees during and, subject to certain limitations, for 12 months following his employment with us, as well as a perpetual confidentiality covenant.

In addition, any compensation paid to Mr. Bhamidipati is subject to recoupment to the extent required by law, the limited liability company agreement of Foundation Technology Worldwide LLC, the 2017 Plan, the award agreements governing the awards granted under the 2017 Plan, his subscription agreement, any clawback policy we adopt, or the requirements of the exchange on which the shares of an affiliate of ours are listed.

Compensation Changes Related to our IPO

In connection with this offering, we expect to make a number of changes to our compensation policies and plans.

Changes to Certain Equity Incentive Awards

In connection with this offering and the Reorganization Transactions, each of our named executive officers is expected to enter into an equity adjustment agreement that provides for certain adjustments to their equity and equity-based awards issued by Foundation Technology Worldwide LLC, the parent company of our operating subsidiaries prior to the Reorganization Transactions. Under each of these equity adjustment agreements, (i) Class A Units issued to the named executive officer before the completion of this offering (whether purchased directly or issued in connection with the vesting of awards) may, at the election of the applicable named executive officer, be exchanged for Class A common stock, (ii) vested MIUs, including MIUs that become vested following the Reorganization Transactions, may, at the election of the participant but not earlier than January 1, 2021 be exchanged for Class A common stock, (iii) MIUs that are not vested at the time of the Reorganization Transactions will remain outstanding and continue to vest on and be subject to the same terms and conditions that applied prior to the Reorganization Transactions, except for the adjustments described in the following paragraph, (iv) outstanding Management Equity Participation Units (“MEPUs”) and RSUs that by their terms become payable in connection with this offering will generally be settled in shares of Class A common stock, and (v) outstanding MEPUs and RSUs that are not vested as of immediately before the completion of this.
offering will be converted into restricted stock units in respect of Class A common stock ("Converted RSUs"), and such Converted RSUs will continue
to vest on and be subject to the same terms and conditions that applied to the RSU being converted prior to the Reorganization Transactions, except that
upon vesting the Converted RSU will generally be settled in Class A common stock.

The portion of any award subject to vesting based on TPG and certain co-investors receiving specified returns will be adjusted so that the vesting
is based solely on the returns received by TPG.

Additionally, after the expiration of the lock-up period described above, our named executive officers who are currently employed will be subject
to additional transfer restrictions on all MIUs, as well as all Class A Units and Class A common stock that they acquired prior to this offering (or under
awards originally granted prior to this offering). Specifically, after the lock-up described above expires, the named executive officers will each be
limited to selling the sum of the following on a quarterly basis: (i) 5.0% of vested Class A common stock received in respect of vested equity awards (or
upon exchange of vested MIUs or Class A Units as described above), (ii) 5.0% of the shares of Class A common stock the applicable executive is
eligible to receive in respect of his or her exchanged of vested Class A Units, and (iii) the shares of Class A common stock the named
executive officer is eligible to receive in respect of the exchange of 5.0% of the number of vested MIUs subject to each of the applicable MIU grants to
each such executive. Furthermore, on each date on which TPG sells any portion of its shares of Class A common stock, to the extent it would result in
the ability sell more shares of Class A common stock than the remaining amounts available for sale as described in the immediately preceding sentence, the
applicable named executive officer will be permitted to sell a pro rata portion of such Class A common stock or Class A common stock he or she
could receive upon exchange of his or her Class A Units or MIUs, in each case, based on the percentage of Class A common stock and Class A Units
sold by TPG.

New 2020 Omnibus Incentive Plan

As described in more detail below, in connection with this offering, we expect to adopt the 2020 Omnibus Incentive Plan (our "2020 Plan"). We
anticipate that following this offering, future equity-based incentive awards will be granted under our 2020 Plan and we will no longer make new grants
under our 2017 Plan.

IPO Option Grants

In connection with this offering and the Reorganization Transactions, holders of MEPUs that have a deemed return threshold that has
not been fully satisfied as of immediately prior to this offering are expected to be granted options to purchase Class A common stock ("IPO
Restructuring Options") under our 2020 Plan. The purpose of the IPO Restructuring Options is to allow the recipients to retain awards after the
Reorganization Transactions take place that, in the aggregate, provide for the right to participate in future growth of our equity value on a basis that is
comparable to the awards they held as of immediately prior to the initiation of the Reorganization Transactions. None of our non-employee directors or
named executive officers will be granted IPO Restructuring Options. The IPO Restructuring Options are expected to have an exercise price equal to the
price of a share of Class A common stock on the date of grant and are expected to vest on the same schedule as the MEPUs to which the IPO
Restructuring Options relate. The total number of IPO Restructuring Options granted in connection with this offering is expected to be

New 2020 Cash Incentive Plan

In connection with this offering, we expect to adopt the 2020 Cash Incentive Plan. We anticipate that following this offering future cash-based
incentive awards granted to our executive officers and key employees will be granted under our 2020 Cash Incentive Plan.

New Executive Severance Arrangement

In connection with the Reorganization Transactions we expect to enter into severance agreements (the "New Severance Agreements") with our
current executive officers (other than Mr. Leav) that we believe are more in
line with market and industry practice. Under the expected terms of the New Severance Agreements eligible senior management team members (each a “Covered Executive”) will be eligible to receive severance in the event their employment is terminated by the Company without cause (as defined in the New Severance Agreement) or terminates his or her employment with the Company for good reason (as defined in the New Severance Agreement), in either case, at a time other than during the period beginning 3 months prior to, and ending 18 months following, the consummation of a change in control, in an amount equal to the sum of (i) an amount equal to 1.0x the Covered Executive’s base salary and target annual bonus as in effect on the date of the Covered Executive’s termination of employment in accordance with the Company’s regular payroll practices, and (ii) if the Covered Executive elects continuation coverage under our health plan, a monthly amount equal to the employer portion of the monthly premiums paid under our group health plan (as of the date of the Covered Executive’s termination of employment) for up to 12 months.

Under the New Severance Agreements, in the event a Covered Executive’s employment is terminated without cause (as defined in the New Severance Agreement) or terminates his or her employment with the Company for good reason (as defined in the New Severance Agreement), in either case, during the period beginning 3 months prior to, and ending 18 months following the consummation of a change in control (“Qualifying Change in Control Termination”), the Covered Executive will be eligible to receive severance in an amount equal to the sum of (i) 1.5x the Covered Executive’s base salary and target annual bonus (in each case at the highest level in effect during the 12-month period leading up to the date of the Covered Executive’s termination of employment), payable in a lump sum, (ii) the pro rata portion of the Covered Executive’s annual bonus, based on actual performance for the year in which termination occurs, payable at the time at the time annual bonuses are payable to senior executives of the Company and its affiliates generally, and (iii) if the Covered Executive elects continuation coverage under our health plan, a monthly amount equal to the employer portion of the monthly premiums paid under our group health plan (as of the date of the Covered Executive’s termination of employment) for up to 18 months. Furthermore, in the event of a Qualifying Change in Control Termination, all unvested time-based equity shall accelerate and vest in full as of the date of the Covered Executive’s termination of employment and all performance-based equity granted following our offering shall vest as of the separation date based on target performance or, if higher and if determinable, based on our actual performance through the date of termination of employment, as applicable, in accordance with the documents governing such performance-based equity award.

The payments provided under the New Severance Agreement are in lieu of and will supersede any severance or similar payments or benefits that the Covered Executive may otherwise be entitled to upon termination of the Covered Executive’s employment, but if payments or benefits become payable under the New Severance Agreement and if the severance payments and benefits provided under the Covered Executive’s employment agreement, offer letter, or prior severance agreement (the “Prior Agreement”) remained payable, to the extent such payments and benefits would be greater than the payments and benefits payable under the New Severance Agreement (the “Excess Payments”), the Excess Payments will, subject to terms and conditions of the New Severance Agreement, be payable under the New Severance Agreement but in accordance with the payment schedule that would have applied to them under the Prior Agreement.

All severance payable under the New Severance Agreement is contingent upon the executive officer’s compliance with the restrictive covenants related to non-competition, non-solicitation and no-hire and material compliance with other restrictive covenants that apply to him or her, and his or her execution and non-revocation of a general release of claims.

In addition, each Covered Executive’s New Severance Agreement provides that in the event the Covered Executive’s then unvested time-based equity awards are not continued, assumed or substituted for in connection with a change in control with awards or rights having the same intrinsic value (determined as of the change in control), such time-based equity awards shall vest in full effective as of the change in control.
New Corporate Governance Policies

Equity Ownership Requirements

Each of our executive officers has a significant interest in our equity, whether held directly or as the result of outstanding equity-based awards. Our compensation committee believes that equity ownership by management and non-employee directors aligns executive officer and shareholder interests and accordingly, we expect to adopt equity ownership requirements for our executive officers and the non-employee directors (other than those associated with TPG, Thoma Bravo and Intel) in connection with this offering. Our minimum equity ownership requirements for our executive officers and non-employee directors require holdings of vested equity and equity-based awards with the following values:

<table>
<thead>
<tr>
<th>Position</th>
<th>Applicable Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer</td>
<td>2.5x of target annual cash compensation</td>
</tr>
<tr>
<td>Executive Vice Presidents</td>
<td>1.5x of target annual cash compensation</td>
</tr>
<tr>
<td>Employees at the level of Senior Vice President or above who have been designated by our board</td>
<td>1.0x of target annual cash compensation</td>
</tr>
<tr>
<td>Non-employee director</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

The value of a share of our capital stock (other than Class B common stock) will be determined based on the average calendar month-end closing price over the 12 calendar months of the calendar year immediately preceding the relevant measurement date. The value of a Foundation Technology Worldwide LLC unit will be based on its implied value determined by applying the foregoing methodology to value a share of Class A common stock (and, where applicable, taking into account any unsatisfied return threshold). A stock option will be valued at the value of the underlying shares of Class A common stock under the foregoing methodology less the applicable exercise price. Any shares that would be withheld or sold to pay any applicable withholding tax upon exercise of an option or delivery of shares shall nonetheless be considered owned for purposes determining an executive officer’s ownership level.

Any executive officer or non-employee director who does not meet or exceed the foregoing requirements will be subject to a 50% retention requirement that restricts the sale by such executive officer or non-employee directors’ equity. The retention requirements do not apply to equity that was vested prior to our initial public offering, or shares withheld or sold to satisfy tax or exercise price payment obligations. Each executive officer is required to achieve the applicable level of ownership by the 5th anniversary of the date on which he or she was first employed. An executive officer who due to a promotion becomes subject to a higher level of ownership is required to achieve such higher level of ownership within 18 months of the date of such promotion (and during such one-year period shall continue to be subject to the ownership requirements previously applicable). Each covered non-employee director is required to achieve the applicable level of ownership by the 4th anniversary of the date on which he or she was first appointed.

Once the requisite level has been achieved, ownership of the required amount must be maintained for as long as the individual remains subject to the minimum equity ownership requirements, except that an executive officer or non-employee director will not be considered out of compliance if the value of his or her equity declines between one measurement date and the next so long as he or she brings himself or herself into compliance by the subsequent measuring date.

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Summary Compensation Table for Fiscal 2019

The following table provides information regarding the compensation earned by our named executive officers for fiscal 2019 and 2018.

<table>
<thead>
<tr>
<th>Name and principal position</th>
<th>Year</th>
<th>Salary ($)</th>
<th>Bonus ($)</th>
<th>Stock Awards ($)</th>
<th>Non-equity Incentive Plan Compensation ($)</th>
<th>Nonqualified Deferred Compensation Earnings ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young, Chief Executive Officer</td>
<td>2019</td>
<td>800,000</td>
<td>—</td>
<td>—</td>
<td>1,800,000</td>
<td>—</td>
<td>56,000</td>
<td>2,656,000</td>
</tr>
<tr>
<td></td>
<td>2018</td>
<td>725,000</td>
<td>—</td>
<td>—</td>
<td>1,047,206</td>
<td>—</td>
<td>25,815</td>
<td>1,798,021</td>
</tr>
<tr>
<td>Michael Berry, Executive Vice President and Chief Financial Officer</td>
<td>2019</td>
<td>537,500</td>
<td>—</td>
<td>2,500,033</td>
<td>939,478</td>
<td>—</td>
<td>5,500</td>
<td>3,982,511</td>
</tr>
<tr>
<td></td>
<td>2018</td>
<td>475,000</td>
<td>—</td>
<td>542,851</td>
<td>607,644</td>
<td>—</td>
<td>8,505</td>
<td>1,634,000</td>
</tr>
<tr>
<td>John Giamatteo, President and Chief Revenue Officer, Enterprise Business Group</td>
<td>2019</td>
<td>650,000</td>
<td>500,000</td>
<td>291,494</td>
<td>637,504</td>
<td>—</td>
<td>29,642</td>
<td>2,108,640</td>
</tr>
<tr>
<td></td>
<td>2018</td>
<td>575,625</td>
<td>500,000</td>
<td>4,806,293</td>
<td>858,424</td>
<td>—</td>
<td>10,010</td>
<td>6,750,352</td>
</tr>
<tr>
<td>Terry Hicks, Executive Vice President, Consumer Business Group</td>
<td>2019</td>
<td>650,000</td>
<td>—</td>
<td>768,215</td>
<td>1,265,684</td>
<td>—</td>
<td>3,885</td>
<td>2,687,784</td>
</tr>
<tr>
<td></td>
<td>2018</td>
<td>103,409</td>
<td>160,000</td>
<td>4,560,708</td>
<td>139,377</td>
<td>—</td>
<td>2,167</td>
<td>6,750,352</td>
</tr>
<tr>
<td>Ashutosh Kulkarni, Executive Vice President and Chief Product Officer, Enterprise Business Group</td>
<td>2019</td>
<td>600,000</td>
<td>1,800,000</td>
<td>1,536,429</td>
<td>1,012,500</td>
<td>—</td>
<td>50,596</td>
<td>4,999,525</td>
</tr>
<tr>
<td></td>
<td>2018</td>
<td>122,917</td>
<td>1,000,000</td>
<td>3,572,551</td>
<td>148,669</td>
<td>—</td>
<td>2,986</td>
<td>4,847,123</td>
</tr>
</tbody>
</table>

(1) Amounts reported in this column reflect the base salaries earned during fiscal 2019 and 2018, as applicable. The base salary for Mr. Berry was prorated in fiscal 2019 to reflect the mid-year changes in his base salary rate and our payroll periods. The base salaries for Messrs. Kulkarni and Hicks were prorated in fiscal 2018 to reflect their mid-year employment commencement dates with the Company.

(2) The amounts reported in this column for Mr. Giamatteo in fiscal 2018 and 2019 represent two installments of a one-time recognition bonus paid in connection with his promotion in June 2018. The amounts reported in this column for Messrs. Kulkarni and Hicks in fiscal 2018 represent sign-on bonuses paid in the applicable year in connection with the commencement of their employment with the Company. The amount reported in this column for Mr. Kulkarni in fiscal 2019 represents two installments of a one-time retention bonus. Please see “Compensation Discussion and Analysis” above for further information regarding the bonuses that were paid in fiscal 2019.

(3) Amounts reported in this column reflect the aggregate grant date fair value of RSUs and MIUs awarded in fiscal 2018 and 2019, as applicable, computed in accordance with FASB ASC Topic 718, Compensation—Stock Compensation and, in the case of the performance-based awards, calculated based on the probable level of achievement of the underlying performance conditions. Because the performance conditions applicable to the performance-based awards included market-based vesting conditions outside of the control of the Company, the grant date fair value of the awards based on the probable level of achievement of the performance conditions was zero under applicable accounting rules. Assuming satisfaction of the underlying performance conditions, the grant date fair value of the fiscal 2018 performance-based awards would be as follows for each of the recipient named executive officers: Mr. Berry, $247,489; Mr. Giamatteo, $804,006; Mr. Hicks, $2,964,571; and Mr. Kulkarni, $2,322,247. Excluded from this table are the cash payments of $1,709,001 and $657,506 received by Messrs. Young and Giamatteo, respectively, in fiscal 2018 with respect to their forfeited Intel awards as such amounts were accounted for under FASB ASC Topic 718 and would be considered fiscal 2017 compensation under SEC executive compensation disclosure rules, and 14,702 RSUs granted to Mr. Hicks and 11,516 RSUs granted to Mr. Kulkarni, in each case, in connection with our June 2019 distribution, which were treated as adjustments to previously granted awards and did not result in any incremental charge under FASB ASC Topic 718 for 2019 or any prior fiscal year. Mr. Giamatteo also received 10,842 RSUs in connection with our June 2019 distribution as an adjustment to his June 2018 RSU grant but due to a provision of his June 2018 promotion letter allowing him certain equity sale opportunities, the issuance of those RSUs resulted in a recognition of the grant date fair value shown above. See Note 12 to our consolidated financial statements for a discussion of the relevant assumptions used in calculating these amounts.
Amounts reported in this column represent cash awards paid to the named executive officers under the AIP. In the case of Messrs. Kulkarni and Hicks, their respective fiscal 2018 AIP pay outs were prorated to reflect their mid-year employment commencement dates. In connection with his termination of employment with McAfee, we agreed to pay Mr. Young’s 2019 AIP payout by applying 100% achievement to his individual performance goals. Please see “Compensation Discussion and Analysis” for further information regarding the AIP.

While Mr. Young participated in our nonqualified deferred compensation plan (as described below), his fiscal 2019 earnings on his balance were not “above-market” as determined under applicable SEC rules and no amount is required to be disclosed here.

The amount reported in this column for 2019 consists of (i) 401(k) matching contributions for each of the named executive officers, (ii) financial planning services provided to Messrs. Young and Kulkarni during fiscal 2019, (iii) a nominal points-based recognition program award provided to Mr. Young and (iv) tax reimbursements for Messrs. Young, Giamatteo, Hicks, and Kulkarni of $10,059, $9,500, $155, and $12,451, respectively, associated with executive and spousal attendance at a Company sales event and the points-based recognition program in the case of Mr. Young.

Grants of Plan-Based Awards Table for Fiscal 2019

The following table provides information regarding the possible payouts to our named executive officers in fiscal 2019 under the AIP and the annual equity awards granted in fiscal 2019 to our named executive officers under the 2017 Plan.

<table>
<thead>
<tr>
<th>Name</th>
<th>Grant date</th>
<th>Threshold ($)</th>
<th>Target ($)</th>
<th>Maximum ($)</th>
<th>Estimated Possible Payouts Under Non-equity Incentive Plan Awards(1)</th>
<th>Estimated Potential Payouts Under Equity Incentive Plan Awards</th>
<th>All Other Stock Awards: Number of Shares of Stock or Units (0)</th>
<th>Grant Date Fair Value of Stock Awards ($0)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>—</td>
<td>600,000</td>
<td>1,200,000</td>
<td>2,700,000</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>9/19/2019</td>
<td>278,363</td>
<td>556,727</td>
<td>1,252,636</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>72,318(3)</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>6/22/2019</td>
<td>425,000</td>
<td>850,000</td>
<td>1,912,500</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>6/22/2019</td>
<td>375,000</td>
<td>750,000</td>
<td>1,687,500</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>10,842(4)</td>
</tr>
<tr>
<td></td>
<td>6/22/2019</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>6,661(6)</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>6/22/2019</td>
<td>300,000</td>
<td>600,000</td>
<td>1,350,000</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>22,222(3)</td>
</tr>
<tr>
<td></td>
<td>11/22/2019</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>768,215</td>
</tr>
<tr>
<td></td>
<td>11/22/2019</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>44,444(3)</td>
</tr>
</tbody>
</table>

(1) These amounts represent threshold, target and maximum cash award levels set in fiscal 2019 under the AIP. For Mr. Berry, the AIP threshold, target and maximum cash award levels for 2019 were based on his blended target annual bonus for the year. The amount actually paid to each named executive officer under the AIP is reported as Non-Equity Incentive Plan Compensation in the “Summary Compensation Table for Fiscal 2019.”

(2) These amounts represent the grant date fair value of RSUs awarded in fiscal 2019, computed in accordance with FASB ASC Topic 718, Compensation—Stock Compensation and, in the case of the performance-based awards, calculated based on the probable level of achievement of the underlying performance conditions. Because the performance conditions applicable to the performance-based awards included market-based vesting conditions outside of the control of the Company, the grant date fair value of the awards based on the probable level of achievement of the performance conditions was zero under applicable accounting rules. See Note 12 to our consolidated financial statements for a discussion of the relevant assumptions used in calculating these amounts.

(3) These amounts represent time-based RSUs, which were scheduled to vest 6.25% per quarter beginning on the last day of the quarter in which the vesting commencement date fell providing that the named executive officer remained continuously employed by the Company through each vesting date, unless they met certain requirements for accelerated vesting.
vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(4) This amount represents additional time-based RSUs granted to Mr. Giammatteo in connection with our June 2019 distribution, which were scheduled to vest on a quarterly basis through June 30, 2021 (11.11% per quarter, beginning June 30, 2019) provided that he remained continuously employed by the Company through each vesting date, unless they met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements). Mr. Giammatteo’s 10,842 RSUs were received in connection with our June 2019 distribution as an adjustment to his June 2018 RSU grant but due to a provision of his June 2018 promotion letter allowing him certain equity sale opportunities, the issuance of those RSUs resulted in a recognition of the grant date fair value shown above.

(5) These amounts represent additional performance-based RSUs granted in connection with our June 2019 distribution, which were eligible to vest 100% upon TPG receiving a specified investment return, provided that the named executive officer remained continuously employed by the Company through the vesting date, unless they met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements). These additional performance-based RSUs were treated as an adjustment to an award of RSUs granted to the applicable named executive officer in 2017 and, as a result, have a grant date fair value, computed in accordance with FASB ASC Topic 718, of zero.

(6) These amounts represent additional time-based RSUs granted in connection with our June 2019 distribution, which vest on a quarterly basis through September 30, 2022 (7.14% per quarter beginning on the last day of the quarter in which the grant date fell) provided that the named executive officer has remained continuously employed by the Company through each vesting date, unless they meet certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements). These additional RSUs were treated as an adjustment to an award of RSUs granted to the applicable named executive officer in 2017 and, as a result, have a grant date fair value, computed in accordance with FASB ASC Topic 718, of zero.

### Outstanding Equity Awards at Fiscal Year-End for Fiscal 2019

The following table summarizes unvested stock awards held by each named executive officer on December 28, 2019.

<table>
<thead>
<tr>
<th>Name</th>
<th>Grant Date(1)</th>
<th>Number of Units That Have Not Vested (9)</th>
<th>Market Value of Units That Have Not Vested ($)</th>
<th>Equity Incentive Plan Awards: Number of Unearned Units that Have Not Vested (10)</th>
<th>Equity Incentive Plan Awards: Market or Payout Value of Unearned Units that Have Not Vested ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>6/1/2017</td>
<td>284,375(3)</td>
<td>9,830,844</td>
<td>455,000(4)</td>
<td>15,729,350</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>6/1/2017</td>
<td>47,063(3)</td>
<td>1,626,968</td>
<td>125,500(4)</td>
<td>4,338,535</td>
</tr>
<tr>
<td></td>
<td>11/14/2018</td>
<td>27,581(3)</td>
<td>60,678</td>
<td>36,774(4)</td>
<td>80,903</td>
</tr>
<tr>
<td></td>
<td>9/19/2019</td>
<td>67,799(3)</td>
<td>2,343,811</td>
<td></td>
<td>533,374</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>6/1/2017</td>
<td>46,563(3)</td>
<td>1,609,683</td>
<td>74,500(4)</td>
<td>2,575,465</td>
</tr>
<tr>
<td></td>
<td>3/27/2018</td>
<td>34,906(3)</td>
<td>76,793</td>
<td>62,055(4)</td>
<td>136,521</td>
</tr>
<tr>
<td></td>
<td>7/31/2018</td>
<td>39,471(3)</td>
<td>86,836</td>
<td>57,411(4)</td>
<td>126,304</td>
</tr>
<tr>
<td></td>
<td>7/31/2018</td>
<td>40,332(5)</td>
<td>1,394,277</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6/22/2019</td>
<td>8,433(9)</td>
<td>291,529</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>11/14/2018</td>
<td>149,046(3)</td>
<td>327,901</td>
<td>198,729(4)</td>
<td>437,204</td>
</tr>
<tr>
<td></td>
<td>11/14/2018</td>
<td>28,125(3)</td>
<td>972,281</td>
<td>37,500(7)</td>
<td>1,296,375</td>
</tr>
<tr>
<td></td>
<td>6/22/2019</td>
<td>5,881(3)</td>
<td>203,306</td>
<td>7,841(7)</td>
<td>271,063</td>
</tr>
<tr>
<td></td>
<td>11/22/2019</td>
<td>22,222(3)</td>
<td>768,215</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>11/14/2018</td>
<td>116,753(3)</td>
<td>256,857</td>
<td>155,671(4)</td>
<td>342,476</td>
</tr>
<tr>
<td></td>
<td>11/14/2018</td>
<td>22,032(3)</td>
<td>761,646</td>
<td>29,375(7)</td>
<td>1,015,494</td>
</tr>
</tbody>
</table>

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# Table of Contents

<table>
<thead>
<tr>
<th>Name</th>
<th>Grant Date(1)</th>
<th>Number of Units That Have Not Vested (9)</th>
<th>Market Value of Units That Have Not Vested ($)(2)</th>
<th>Equity Incentive Plan Awards: Number of Unearned Units that Have Not Vested (6)</th>
<th>Equity Incentive Plan Awards: Market or Payout Value of Unearned Units that Have Not Vested ($)(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6/22/2019</td>
<td>4,607(9)</td>
<td>159,264</td>
<td>6,142(7)</td>
<td>212,329</td>
</tr>
<tr>
<td></td>
<td>11/22/2019</td>
<td>44,444(8)</td>
<td>1,536,429</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Reflects RSUs and MIUs granted under our 2017 Plan.

(2) Because the Company was not publicly traded during fiscal 2019, there is no ascertainable public market value for these units. The market value reported in this table is based upon our board’s determination of the fair market value of the Company’s equity, $34.57 per Class A Unit, which was determined taking into account an independent valuation analysis performed in June 2019, the closest valuation date to fiscal year-end. Where applicable, the fair market value of an MIU reflects the value of a Class A Unit less any unsatisfied return threshold.

(3) Represents time-based MIUs, which were scheduled to vest 6.25% per calendar quarter beginning on the last day of the quarter in which the vesting commencement date fell (or, in the case of Mr. Young, the last date of the quarter in which the first anniversary of the vesting commencement date fell) provided that the named executive officer has remained continuously employed by the Company through each vesting date, unless they met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(4) Represents performance-based MIUs, which were scheduled to vest based upon TPG’s investment vehicle receiving specified investment returns, provided that the named executive officer remained continuously employed by the Company through each vesting date, unless they met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(5) Represents time-based RSUs, which were scheduled to vest on a quarterly basis through June 30, 2021 (11.10% per quarter beginning on June 30, 2019) provided that Mr. Giammatteo remained continuously employed by the Company through each vesting date, unless he met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(6) Represents time-based RSUs, which were eligible to vest 8.33% per quarter over the three-year period following the grant date provided that Mr. Giammatteo remained continuously employed by the Company through each vesting date, unless he met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(7) Represents performance-based RSUs, which were eligible to vest 100% upon TPG’s investment vehicle receiving a specified investment return, provided that the named executive officer has remained continuously employed by the Company through the vesting date, unless they met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(8) Represents time-based RSUs, which vest 6.25% per quarter beginning on the last day of the quarter in which the vesting commencement date fell, provided that the named executive officer has remained continuously employed by the Company through each vesting date, unless they meet certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).

(9) Represents time-based RSUs, which vest on a quarterly basis through September 30, 2022 (7.14% per quarter beginning on at the end of the quarter in which the grant date fell) provided that the named executive officer has remained continuously employed by the Company through each vesting date, unless they met certain requirements for accelerated vesting (see “—Potential Payments Upon Termination or Change in Control for Fiscal 2019” narrative for a description of these requirements).
Units Vested in Fiscal 2019

The following table summarizes the number and market value of equity awards held by each named executive officer that vested during fiscal 2019.

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Units Acquired on Vesting (1)</th>
<th>Value Realized on Vesting (2) ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>210,093</td>
<td>8,260,537</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>45,087</td>
<td>1,298,146</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>128,542</td>
<td>4,072,225</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>60,037</td>
<td>488,492</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>47,027</td>
<td>382,597</td>
</tr>
</tbody>
</table>

(1) Amounts reported in this column represent the number of the named executive officer’s Class A Units and MIUs that vested during fiscal 2019. These Class A Units and MIUs remain subject to transfer restrictions pursuant to the terms of the underlying agreements.

(2) Because the Company was not publicly traded during fiscal 2019, there is no ascertainable public market value for these units. The market value reported in this table, is based upon our board’s determination of the fair market value of the Company’s equity, taking into account the most recent independent valuation analysis performed prior to each respective vesting date. Where applicable, the fair market value of an MIU reflects the value of a Class A Unit less any unsatisfied return threshold.

Pension Benefits for Fiscal 2019

None of our named executive officers participated in or was entitled to receive benefits under a defined benefit pension plan in fiscal 2019.

Nonqualified Deferred Compensation for Fiscal 2019

The following table provides information regarding compensation that has been deferred by our named executive officers pursuant to the terms of the NQDC Plan.

<table>
<thead>
<tr>
<th>Name</th>
<th>Executive Contributions in Fiscal 2019($)</th>
<th>Registrant Contributions in Fiscal 2019($)</th>
<th>Aggregate Earnings in Fiscal 2019($)</th>
<th>Aggregate Withdrawals/Distributions($)</th>
<th>Aggregate Balance at 2019 FYE($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>—</td>
<td>—</td>
<td>9,218</td>
<td></td>
<td>532,821</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td>—</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td>—</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td>—</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td>—</td>
</tr>
</tbody>
</table>

We maintain the NQDC Plan, for certain of our employees, including each of our named executive officers. Under the NQDC Plan, participants may defer up to 50% of their compensation, as defined in the Company’s 401(k) plan, and incentive bonuses other than retention, relocation and sign-on bonuses. The NQDC also provides the Company with discretion to make matching and discretionary contributions into the NQDC Plan. Participants may specify the timing of the payment of their accounts by choosing either a specified payment date or electing payment upon separation from service, and in either case, may elect to receive their accounts in a lump sum or in annual installments over a period of up to ten years, with accelerated payouts in the event of death or disability of the participant. Participants are generally permitted to choose from among the mutual funds available for investment under the 401(k) plan for purposes of determining the imputed earnings, gains, and losses applicable to their NQDC Plan accounts.
Potential Payments Upon Termination or Change in Control for Fiscal 2019

During fiscal 2019, certain of our named executive officers were entitled to receive certain benefits upon a qualifying termination of employment and upon certain change in control transactions, as described below.

Agreements with Executives

Employment Agreement with Mr. Young

Under the terms of Mr. Young’s employment agreement, as in effect prior to his termination of employment, if we terminated Mr. Young’s employment without cause (as defined in the employment agreement) or if Mr. Young resigned for good reason (as defined in the employment agreement), Mr. Young would have been entitled to: (i) severance in an amount equal to the sum of one year of his base salary and annual incentive target (payable in substantially equal installments over the 12-month period following the termination of his employment); (ii) his annual incentive based on actual performance for the year in which the termination occurs, pro-rated based on the number of days he was employed by us during such year; and (iii) if Mr. Young elected coverage under COBRA, a monthly taxable subsidy to participate in the Company’s medical, dental and vision plans equal to the employer-paid portion for active employees who elect the same type of coverage for the earlier of 12 months or the time at which he becomes eligible for health coverage from another employer. Mr. Young would have also been entitled to any earned but unpaid base salary through the date of termination, unreimbursed business expenses, earned but unpaid annual incentive relating to the year preceding the year in which the termination occurred, any earned and unused vacation (to the extent required by applicable law), and employee benefits, if any, to which Mr. Young, Mr. Young’s estate or his dependents may be entitled under the employee benefit plans or programs of the Company (the “Accrued Rights”).

Upon a resignation without good reason, or a termination of employment due to Mr. Young’s death or disability, he would have been entitled only to the Accrued Rights. Upon a termination for cause, Mr. Young would have been entitled only to the Accrued Rights, except for any unpaid annual incentive for the prior year.

It was a condition to Mr. Young’s receipt of the severance payments described above (other than the Accrued Rights) that he timely execute and deliver (without revoking) a release of all claims against us and that he continue to comply with the limited liability company agreement of Foundation Technology Worldwide LLC, the 2017 Plan, the award agreements governing the awards granted under the 2017 Plan, and the employment agreement, the latter of which included a covenant not to compete with us or to solicit our clients or employees during and, subject to certain limitations, for 12 months following his employment with us, as well as a perpetual confidentiality covenant.

In connection with his termination of employment in February 2020, we entered into a separation agreement with Mr. Young, which will be filed as an exhibit to the registration statement of which this prospectus forms a part.

Offer Letter with Mr. Berry

Under the terms of his offer letter, as in effect prior to his termination of employment, if we terminated Mr. Berry’s employment without cause (as defined in the offer letter) or if Mr. Berry resigned for good reason (as defined in the offer letter), Mr. Berry would be entitled to (i) an amount equal to the sum of one year of his base salary and annual incentive target, (ii) a payment equal to the employer contribution rate in effect for Mr. Berry and his eligible dependents to continue healthcare coverage under COBRA for one year, and (iii) if we terminated Mr. Berry’s employment without cause prior to the payment of any annual incentive relating to any prior fiscal year or during the fourth quarter of any fiscal year, an annual incentive based on actual performance and prorated based on the number of days employed that fiscal year, with such severance payable as salary continuation following the termination of his employment.
It was a condition to Mr. Berry’s receipt of the severance payment described above that he timely execute a release of claims against us and that he comply with certain restrictive covenants set forth in his restrictive covenant agreement attached as an addendum to the offer letter, including a covenant not to compete with us or to solicit our clients or employees during and, subject to certain limitations, for 12 months following his employment with us and covenants relating to confidentiality and non-disparagement.

Promotion Letter Agreement with Mr. Giamatteo

Under the terms of his promotion letter agreement, as in effect prior to his termination of employment, if we terminated Mr. Giamatteo’s employment without cause (as defined in the offer letter), Mr. Giamatteo would have been entitled to severance in the form of: (i) one year of base salary; (ii) his annual incentive target; (iii) a payment equal to the employer contribution rate in effect for similarly-situated active employees for Mr. Giamatteo and his eligible dependents to continue healthcare coverage under COBRA for one year following his termination; (iv) any remaining unpaid portion of his retention bonuses described in his offer letter; and (v) a cash amount equal to the fair market value of any unvested RSUs subject to the award in the offer letter. Such amounts would have been paid as salary continuation over the one-year period following termination in accordance with our regular payroll schedule. It was a condition to Mr. Giamatteo’s receipt of the severance payment described above that he timely execute (without revoking) a release of claims against us. If Mr. Giamatteo’s employment were terminated without cause (as defined in the award agreement underlying his MIU grant) within two years following a change in control, all MIUs granted pursuant to his June 2018 letter agreement that were subject to time-based vesting would have automatically vested in full as of immediately prior to such termination of employment. In connection with his termination of employment in January 2020, we entered into a separation agreement with Mr. Giamatteo, which will be filed as an exhibit to the registration statement of which this prospectus forms a part.

Offer Letters with Messrs. Kulkarni and Hicks

Under the terms of the offer letters with Messrs. Kulkarni and Hicks, if we terminate the employment with the applicable executive without cause or he resigns for good reason, in either case, within two years following a change in control, all of his time-vesting awards would vest in full.

Acceleration of Equity-Based Awards in Connection with a Change in Control

During fiscal 2019, all our named executive officers held unvested MIUs and unvested RSUs that were subject to certain time-based and/or performance-based vesting conditions. Messrs. Kulkarni and Hicks continue to hold unvested MIUs and RSUs. Generally, the award agreements evidencing time-based MIU and RSU awards provide that if the executive’s employment with us is terminated without cause or for good reason (each, as defined in the underlying award agreement) within the two-year period following a change in control (as such term is defined in our 2017 Plan), all outstanding MIUs and RSUs subject to time-based vesting will automatically become vested in full as of immediately prior to such termination of employment. Certain outstanding MIUs and RSUs subject to time-based vesting held by Messrs. Young and Berry would have automatically vested in full as of immediately prior to the consummation of a change in control. As described above, Mr. Giamatteo’s June 2018 letter agreement also provided for accelerated vesting of MIUs subject to time-based vesting that were granted pursuant to that letter agreement in connection with a termination of his employment without cause within two years following a change in control. Unvested MIUs and RSUs subject to performance-based vesting were only eligible to vest to the extent the applicable performance vesting criteria set forth in the underlying award agreement evidencing such MIU or RSU was satisfied upon such change in control.
The amounts that would have been payable by us to each of the named executive officers under their agreements with us that were then in effect, assuming that each individual’s employment had terminated on December 28, 2019, the last business day of fiscal 2019 fiscal, are set forth below:

## Potential Payments Upon a Qualifying Termination of Employment(1)

<table>
<thead>
<tr>
<th>Name</th>
<th>Severance Payment ($)</th>
<th>Prorated Annual Incentive Award ($)</th>
<th>Retention Bonuses ($)</th>
<th>Value of Accelerated Equity Awards ($)</th>
<th>Welfare Benefits ($)</th>
<th>Aggregate Payments ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>2,000,000</td>
<td>1,800,000</td>
<td>—</td>
<td>—</td>
<td>11,851</td>
<td>3,811,851</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>1,250,000</td>
<td>939,478</td>
<td>—</td>
<td>—</td>
<td>6,740</td>
<td>2,196,218</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>1,500,000</td>
<td>—</td>
<td>1,000,000</td>
<td>1,685,783</td>
<td>12,739</td>
<td>4,198,522</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) A qualifying termination means, for Messrs. Young, Berry, and Giamatteo, termination of the named executive officer’s employment by the Company without cause, or, for Messrs. Young and Berry only, by the named executive officer for good reason.

(2) Amounts reported in this column represent the sum of the named executive officer’s base salary and the named executive officer’s annual incentive target, in each case, as in effect on the last business day of fiscal 2019.

(3) Under the terms of their offer letters, Messrs. Young and Berry were entitled to a prorated incentive payout for the year of termination based on actual performance. The amounts reported in this column represent the fiscal 2019 annual incentive award, which is also reported in the “Summary Compensation Table for Fiscal 2018” as 2019 compensation. Mr. Young was also entitled to this amount upon a termination of his employment without good reason or due to his death or disability.

(4) Pursuant to Mr. Giamatteo’s promotion letter, he was entitled to the unpaid portion of his retention bonus in the event his employment was terminated without cause by the Company.

(5) Amounts reported in this column represent the value of the accelerated vesting of certain of the named executive officer’s time-based RSUs that were outstanding and unvested as of the last day of fiscal 2019. Because the Company was not publicly traded during fiscal 2019, there is no ascertainable public market value for these units. The market value reported in this table is based upon our board’s determination of the fair market value of the Company’s equity, taking into account a valuation analysis performed in June 2019, the closest valuation date to fiscal year-end.

(6) Amounts reported in this column represent the estimated value of continued welfare benefits that the indicated named executive officers would have been entitled to receive upon a qualifying termination of employment.
Potential Payments Upon a Change in Control or a Qualifying Termination of Employment in Connection with a Change in Control(1)

The amounts that would have been payable by us to each of the named executive officers, assuming that each individual’s employment had terminated and/or a change in control of the Company had occurred on the last business day of our 2019 fiscal year, are as set forth below. Except where noted below that the payment would have been made regardless of a termination of employment, these amounts are payable in connection with a qualifying termination of employment and would be in addition to the amounts in the table directly above.

<table>
<thead>
<tr>
<th>Name</th>
<th>Value of Accelerated Equity Awards ($)</th>
<th>Aggregate Payments ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Young</td>
<td>9,830,844</td>
<td>9,830,844</td>
</tr>
<tr>
<td>Michael Berry</td>
<td>4,031,457</td>
<td>4,031,457</td>
</tr>
<tr>
<td>John Giamatteo</td>
<td>3,459,118</td>
<td>3,459,118</td>
</tr>
<tr>
<td>Terry Hicks</td>
<td>2,271,703</td>
<td>2,271,703</td>
</tr>
<tr>
<td>Ashutosh Kulkarni</td>
<td>2,714,196</td>
<td>2,714,196</td>
</tr>
</tbody>
</table>

(1) A qualifying termination means a termination of the named executive officer’s employment by the Company without cause or by the named executive officer for good reason, in either case, within the two-year period following a change in control. Messrs. Young, Berry, and Giamatteo were also entitled to additional payments if they were terminated without cause or, in the case of Messrs. Young and Berry, resign for good reason, whether or not such termination is following a change in control. These payments are reflected in the previous table.

(2) Amounts reported in this column represent the value of the accelerated vesting of the named executive officer’s time-based RSUs and/or MIUs that were outstanding and unvested as of our last business day of fiscal 2019. Because the Company was not publicly traded during fiscal 2019, there is no ascertainable public market value for these units. The market value reported in this table, $34.57 per Class A Unit, is based upon our board’s determination of the fair market value of the Company’s equity, taking into account the most recent independent valuation analysis performed prior to each respective vesting date. Because the Company was not publicly traded during fiscal 2019, there is no ascertainable public market value for these units. Where applicable, the fair market value of an MIU reflects the value of a Class A Unit less any unsatisfied return threshold.

(3) Upon a change in control that occurs prior to the termination of the applicable named executive officer’s employment, outstanding MIUs from Mr. Berry’s June 2017 grant and all MIUs held by Mr. Young that were subject to time-based vesting would have automatically vested in full as of immediately prior to the consummation of the change in control. If a change in control occurred as of our last business day of fiscal 2019 prior to a termination of employment, the value of the accelerated vesting of such MIUs and RSUs would equal $9,830,844 for Mr. Young and $1,626,968 for Mr. Berry, determined based on the assumptions described in footnote 2 above.

2017 Plan

Our 2017 Plan was originally adopted by our board of managers in April 2017 and is expected to be amended and restated in connection with this offering, effective upon the completion of this offering (the “Effective Time”). As described below, we expect to adopt the 2020 Plan in connection with this offering. Upon the completion of this offering, while existing awards (as adjusting in connection with our offering) will remain under our 2017 Plan, we will no longer make new awards under our 2017 Plan.

Our 2017 Plan provides for the grant of MIUs, MEPUs, restricted Class A Units, RSUs, and other cash- and equity-based awards to our key employees, partners, officers, directors, consultants and advisors. Prior to the consummation of this offering, our 2017 Plan is administered by the board of managers of Foundation
Technology Worldwide LLC (or its delegate), which has discretionary authority to, among other things, prescribe such forms, rules, and procedures relating to the 2017 Plan and awards granted thereunder, as it deems advisable. The terms of awards granted under the 2017 Plan regarding vesting, the effect of a termination of employment, MIU return thresholds (if applicable), and settlement of awards (if applicable) are set forth in the underlying award agreements. Following the consummation of this offering, we expect that our compensation committee will serve as the administrator of our 2017 Plan.

Under our 2017 Plan, a maximum of 7,101,000 MIUs and MEPUs, collectively, and 6,551,417 RSUs and restricted Class A Units, collectively, are available for grant, pending its expected closure to new awards in connection with this offering. MIUs are profits interests that must have a per unit return threshold that is equal to the fair market value of a Class A unit on the date of grant. MEPUs represent an unfunded and unsecured promise, denominated in MIUs, to deliver an amount in cash based on the value of notional MIUs if they were granted on the same date as the MEPUs, subject to certain conditions, including specified performance or other vesting conditions. Prior to the adjustments expected to be undertaken in connection with this offering, RSUs represent an unfunded and unsecured promise, denominated in Class A Units, to deliver Class A Units or cash in lieu of Class A Units in the future, subject to certain conditions, including specified performance or other vesting conditions. As of the Effective Time, awards consisting or in respect of (a) MIUs, (b) Class A Units, and (c) time and performance based vesting restricted stock units that are settled in shares of our Class A common stock (“PubCo RSUs”) are expected to be outstanding under the 2017 Plan.

In the event of any stock or unit split, stock or unit dividend, combination of units, recapitalization or other similar change in the Company’s or Foundation Technology Worldwide LLC’s capital structure that constitutes an equity restructuring within the meaning of FASB ASC Topic 718 (or any successor provision), the number and kind of securities and MEPUs subject to awards then outstanding, or subsequently granted under our 2017 Plan, any MIU return threshold applicable to a MIU grant, or any other provisions of outstanding awards determined by the administrator to be affected by such change will be appropriately adjusted in a manner determined by our 2017 Plan’s administrator.

In the event of a covered transaction (which generally includes any transaction in which (i) one or more classes of securities issued by the Company or Foundation Technology Worldwide LLC are converted into, or exchanged for, securities in another form issued by it, any of its direct or indirect subsidiaries, a newly formed parent or affiliated persons, (ii) the Company or Foundation Technology Worldwide LLC merges or otherwise combines with one or more affiliates with the Company or Foundation Technology Worldwide LLC surviving any such merger or combination, or (iii) any other transaction our 2017 Plan’s administrator determines to be a covered transaction) outstanding awards shall be subject to the agreement or arrangement governing the terms of the covered transaction, which may include (but is not limited to) assumption or substitution of awards for similar awards by an acquiring or surviving entity, cash-out of awards or the termination of unvested awards, provided, however, if unvested awards are to be terminated without payment in connection with a covered transaction that does not constitute a change in control under the terms of our 2017 Plan (which includes any transaction or series of transactions in which (i) Manta Holdings, L.P. and its affiliates and Intel Americas, Inc. and any of their subsidiaries and affiliates sell (A) more than 60% of their aggregate interests to an unrelated third party who is a financial buyer (and do not directly or indirectly hold 40% or more of the acquiring person after the transaction) or (B) more than 50% of their aggregate interests to an unrelated third party who is a strategic buyer, or (ii) there is a sale or exclusive license of substantially all of our assets to an unrelated third party), 100% of all such awards generally will immediately vest as of the date preceding such covered transaction that constitutes a change in control unless such unvested awards are assumed or substituted in such transaction.

The administrator of our 2017 Plan may amend our 2017 Plan or any outstanding award for any purpose which may at the time be permitted by applicable law, and may at any time terminate our 2017 Plan as to any future grants of awards, generally subject to a participant’s consent if such action materially and adversely affects the participant.
The foregoing summary is not a complete description of all of the terms of our 2017 Plan and is qualified in its entirety by reference to our 2017 Plan, which will be filed as an exhibit to the registration statement of which this prospectus forms a part.

**New Compensation Plans**

**2020 Plan**

In connection with this offering, we intend to adopt our 2020 Plan, the expected terms of which are as follows:

**Administration.** The 2020 Plan will be administered by our compensation committee, which will have the discretionary authority to interpret the plan; determine eligibility for and grant awards; determine the exercise price, base value from which appreciation is measured or purchase price applicable to an award; determine, modify, accelerate or waive the terms and condition of any award; determine the form of settlement of awards; prescribe forms, rules and procedures relating to the plan and awards; and otherwise do all things necessary or desirable to carry out the purposes of the plan.

Except in connection with a corporate transaction involving the Company, the Company may not, without obtaining stockholder approval, (i) amend the terms of outstanding options or stock appreciation rights (“SARs”) to reduce the exercise price or base value of such options or SARs, (ii) cancel outstanding options or SARs in exchange for options or SARs that have an exercise price or base value that is less than the exercise price or base value of the original options or SARs, or (iii) cancel outstanding options or SARs that have an exercise price or base value greater than the fair market value of a share of Class A common stock on the date of such cancellation in exchange for cash or other consideration.

Our compensation committee may delegate certain of its powers under the 2020 Plan, to the extent permitted by law, to one or more of its members or members of the board of directors, officers, employees or other persons. As used in this summary, the term “Administrator” refers to our compensation committee or its authorized delegates, as applicable.

**Eligibility to Receive Awards.** Current and prospective employees, consultants and advisors of ours and our affiliates and non-employee directors are eligible to receive awards under our 2020 Plan. Eligibility for stock options intended to be incentive stock options within the meaning of Section 422 of the Code (“ISOs”) will be limited to employees of the Company or a parent corporation or a subsidiary corporation of the Company.

**Authorized Shares.** Subject to adjustment as described below, the maximum number of shares of Class A common stock that may be issued in satisfaction of awards under our 2020 Plan will be shares, which we refer to as the “Share Pool.” The Share Pool shall increase annually on the first day of each fiscal year during the term of the 2020 Plan, beginning with the second fiscal year that begins during the term of the 2020 Plan and ending with the tenth fiscal year that begins during the term of the 2020 Plan, in each case, with such increase equal to the lesser of (i) 5% of the sum of (A) the number of shares of Class A common stock and (B) the number of units of FTW (that are not held by us), in each case, that are outstanding as of the last day of the preceding fiscal year and (ii) the amount determined by the our Board. All of the shares in the original Share Pool, without regard to the increases provided for in the prior sentence may be issued in satisfaction of ISOs.

The following rules will apply in respect of the Share Pool:

- When an award is issued, the Share Pool will be reduced by the maximum number of shares of common stock that can delivered under an award (even if the award is denominated in a lesser number of shares).
- Any shares of common stock withheld in payment of the exercise price or purchase price of an award, or in satisfaction of tax withholding requirements with respect to an award, will increase the Share Pool.
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- All shares of common stock covered by a SAR any portion of which is settled in common stock will reduce the Share Pool.
- Any shares of common stock underlying any portion of an award (or award issued under the 2017 Plan) that is settled in cash or that expires, becomes unexercisable, terminates or is forfeited to or repurchased by the Company without the issuance of common stock (or retention, in the case of restricted or unrestricted common stock), will increase the Share Pool.
- The Share Pool will not be increased by any shares that are delivered under the 2020 Plan that are subsequently repurchased by the Company using proceeds directly attributable to stock option exercises.
- Shares issued under awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition will not reduce the Share Pool.

Annual Non-Employee Director Limits. The aggregate value of all equity awards or compensation granted or paid to any non-employee director with respect to any fiscal year, including awards granted under the 2020 Plan and cash fees or other compensation paid by the Company, in each case, for service as a director, may not exceed $600,000 calculating the value of any equity awards based on the grant date fair value in accordance with applicable accounting rules, assuming maximum payout levels to the extent applicable and determined without regard to any deferrals in accordance with any deferred compensation arrangement of the Company or any of its affiliates. This limit will not apply to an award or shares of Class A common stock granted pursuant to a non-employee director’s election to receive an award or shares of Class A common stock in lieu of cash retainers or other fees, to the extent such award or shares of Class A common stock have a grant date fair value equal to the value of such cash retainers or other fees.

Types of Awards. Our 2020 Plan provides for the grant of incentive stock options, nonqualified stock options, SARs, restricted stock awards, PubCo RSUs or other stock-based awards, cash-based awards and performance awards which we refer to collectively as “awards.” Dividends or dividend equivalents may also be granted or paid in connection with awards other than stock options and SARs under our 2020 Plan, provided that any dividends or dividend equivalents will be subject to the same risk of forfeiture, if any, as applies to the underlying award except as otherwise provided by the Administrator.

- Stock Options and SARs. The Administrator may grant stock options intended to qualify as ISOs, stock options not intended to qualify as ISOs (which are referred to as nonstatutory stock options or “NSOs”) and SARs.
- Stock Awards and Restricted Stock Awards. The Administrator may grant stock awards, which may, but need not be, subject to forfeiture if specified vesting conditions are not satisfied.
- Stock Unit and PubCo RSUs. The Administrator may grant stock unit awards, which may, but need not be, subject to forfeiture if specified vesting conditions are not satisfied.
- Cash Awards. The Administrator may grant awards denominated in cash.
- Other Stock-Based Awards. The Administrator may grant other awards that are convertible into or otherwise based on Class A common stock on such terms and conditions as it determines.
- Performance Awards. The Administrator may grant awards subject to performance vesting conditions and such other terms and conditions as may be determined by the Administrator.

Vesting and Other Terms and Conditions of Awards. The Administrator will determine the terms and conditions of all awards granted under the 2020 Plan, including the time or times an award will vest, become exercisable and remain exercisable, and may at any time accelerate the vesting or exercisability of an award or limit the vesting or exercisability of an award.

The exercise price (or the base value from which appreciation is to be measured) per share of each award requiring exercise must be no less than 100% (in the case of an ISO granted to an employee who owns more than
10% of the voting power of all classes of our or any parent or subsidiary of ours, 110%) of the fair market value of a share of Class A common stock, determined as of the date of grant of the award, or such higher amount as the Administrator may determine in connection with the grant.

The maximum term of options and SARs must not exceed ten years from the date of grant (or five years from the date of grant in the case of an ISO granted to an employee who owns more than 10% of the voting power of all classes of our or any parent or subsidiary of ours), except that if a participant is still holding an outstanding but unexercised NSO or SAR ten years from the date of grant (or, in the case of an NSO or SAR with a maximum term of less than ten years, such maximum term), is prohibited by applicable law or a written policy of the Company applicable to similarly situated employees from engaging in any open-market sales of Class A common stock, and if at such time the Class A common stock (or other securities received in respect of an award or any portion thereof) is publicly traded (as determined by the Administrator), the maximum term of such award will instead be deemed to expire on the 30th day following the date the participant is no longer prohibited from engaging in such open market sales.

**Termination of Employment or Other Status.** The Administrator will determine the effect of a termination of employment or other service relationship of a participant on an award. After the termination of a participant’s employment or other service relationship, the vested portion of his or her option generally will immediately terminate upon a termination for cause (or a termination that occurs in circumstances that the Administrator determines would have constituted grounds for termination for cause), will remain exercisable for one year following a termination due to death or disability, or will remain exercisable for three months following a termination for any other reason.

**Transferability of Awards.** Except as the Administrator may otherwise provide, awards may not be transferred, other than by will or the laws of descent and distribution, and, during the life of the participant, may be exercised only by the participant.

**Effect of certain changes in capitalization.** In the event of a stock dividend, stock split or combination of shares (including a reverse stock split), merger, spin-off transaction, extraordinary dividend or distribution, recapitalization or other change in the Company’s capital structure constituting an equity restructuring under applicable accounting rules, appropriate adjustments (as determined by the Administrator in its sole discretion) will be made to the Share Pool under the 2020 Plan, the number and kind of shares of stock or securities underlying equity awards then outstanding or subsequently granted, any exercise or purchase prices (or base values) relating to awards and any other provision of awards affected by such change. For the avoidance of doubt, the Administrator may determine in its sole discretion in any such case that no adjustment is appropriate in the event that cash or other property is provided (or may be provided subject to vesting or other conditions) in lieu of an adjustment to the award (or portion thereof).

The Administrator may also make similar adjustments to take into account other distributions to stockholders or any other event, if the Administrator determines that adjustments are appropriate to avoid distortion in the operation of the 2020 Plan or any award, taking into account the qualification of options as ISOs, the requirements of Section 409A, to the extent applicable, and the applicable accounting rules.

**Effect of certain corporate transactions.** Subject to the terms of the applicable award agreements, the Administrator may determine the effect of a change in control (as defined in our 2020 Plan) on then-outstanding awards in its discretion, including, without limitation, whether some or all outstanding options and stock appreciation rights will become exercisable in full or in part, whether the restriction period and performance period applicable to some or all outstanding restricted stock awards and restricted stock unit awards will lapse in full or in part, and whether the performance measures applicable to some or all outstanding awards will be deemed to be satisfied. The Administrator may further require that shares of stock of the corporation resulting from such a change in control, or a parent corporation thereof, or other award types be assumed, continued or substituted for some or all of our shares subject to an outstanding award and that any outstanding awards in whole or in part, vested or unvested, be surrendered to us by the holder, to be immediately cancelled by us, in
exchange for a cash payment, shares of capital stock of the corporation resulting from or succeeding us or other property or rights or a combination of the foregoing. Except as the Administrator may otherwise determine, each award will automatically terminate (and in the case of outstanding shares of restricted stock, will automatically be forfeited) immediately upon the consummation of the change in control, other than (i) any award that is assumed, continued or substituted, and (ii) any cash award that by its terms, or as a result of action taken by the Administrator, continues following the change in control. The Administrator does not need to take the same action with respect to all awards, all awards held by a participant or all awards of the same type.

Recovery of Compensation. Subject to the terms of any applicable award agreement, the Administrator may cause any outstanding award (whether or not vested or exercisable), the proceeds from the exercise or disposition of any award or Class A common stock acquired under any award, and any other amounts received in respect of any award or Class A common stock acquired under any award to be forfeited and disgorged to the Company (or its designated affiliate), with interest and other related earnings, if the participant to whom the award was granted is not in compliance with any provision of the 2020 Plan or any applicable award agreement or any noncompetition, non-solicitation, no-hire, non-disparagement, confidentiality, invention assignment, or other restrictive covenant by which he or she is bound. Subject to the terms of any applicable award agreement, each award will be subject to any policy of the Company or any of its subsidiaries or affiliates that provides for forfeiture, disgorgement, recoupment or clawback with respect to incentive compensation that includes awards under the 2020 Plan and will be further subject to forfeiture and disgorgement to the extent required by law or applicable stock exchange listing standards.

Amendment or Termination. No award may be granted under our 2020 Plan on or after the tenth anniversary of the earlier of the date the 2020 Plan was approved by the Company’s stockholders or adopted by the Board. The Administrator may at any time amend the 2020 Plan or any outstanding award, subject to the participant’s consent if it would materially and adversely affect the participant’s rights under the award and subject to any applicable stockholder approval requirements. We are required to obtain stockholder approval for any amendment to the 2020 Plan to the extent necessary to comply with applicable laws, including the rules of Nasdaq, as determined by the Administrator. The Administrator may at any time terminate the 2020 Plan as to future grants of awards.

The foregoing summary is not a complete description of all of the terms of our 2020 Plan and is qualified in its entirety by reference to our 2020 Plan, which will be filed as an exhibit to the registration statement of which this prospectus forms a part.

Employee Stock Purchase Plan

In connection with this offering, we expect to adopt the McAfee Corp. Employee Stock Purchase Plan (our ESPP) with expected terms of which are as follows:

Authorized shares. A total of shares will be available for sale under our ESPP. In addition, subject to adjustments described below, the maximum number of shares which shall be made available for sale under the ESPP shall automatically increase on the first day of each fiscal year during the term of the ESPP, beginning with the second fiscal year that begins during the term of the ESPP and ending with the tenth fiscal year that begins during the term of the ESPP, by an amount equal to the lesser of (i) 1% of the sum of (A) the number of shares of Class A common stock and (B) the number of units of FTW (that are not held by us), in each case, that are outstanding as of the last day of the preceding fiscal year, or (ii) such number of shares as may be established by our Board; provided that in no event will the aggregate number of shares added to the ESPP under these automatic increases exceed .

Plan administration. Our compensation committee will administer our ESPP and will have full and exclusive discretionary authority to construe, interpret, and apply the terms of our ESPP, to delegate ministerial duties to any of our employees, to designate separate offerings under our ESPP, to designate our subsidiaries and
affiliates as participating in the ESPP, to determine eligibility, to adjudicate all disputed claims filed under our ESPP, and to establish procedures that it

deems necessary or advisable for the administration of the ESPP. As used in this summary, the term “Administrator” refers to our compensation
committee or its authorized delegates, as applicable.

**Eligibility.** Generally, all our employees will be eligible to participate if they are customarily employed by us, or any participating subsidiary or
affiliate, for more than 20 hours per week and at least five months in any calendar year.

However, an employee may not be granted rights to purchase our shares under our ESPP if such employee:

- immediately after the grant would own shares possessing 5% or more of the total combined voting power or value of all classes of our
  share capital; or

- holds rights to purchase shares under all our employee share purchase plans that accrue at a rate that exceeds $25,000 worth of our shares
  for each calendar year.

The Administrator may modify the foregoing limitations or provide for additional limitations or restrictions on eligibility to the extent offerings
are made under the component of the plan that is not intended to be tax-qualified under Section 423 of the Code.

**Offering periods; purchase periods.** Our ESPP includes a component that allows us to make offerings intended to qualify under Section 423 of the
Code and a component that allows us to make offerings not intended to qualify under Section 423 of the Code, as described in our ESPP. No offerings
have been authorized to date by the Administrator under the ESPP. However, if any such offerings are so authorized in the future, we anticipate that for
at least some period following our initial public offering that such ESPP offerings would be made under the non-qualified component of the plan. If the
Administrator authorizes an offering period under the ESPP, the Administrator is authorized to establish the duration of offering periods and purchase
periods, including the starting and ending dates of offering periods and purchase periods, provided that no offering period under the qualified component
may have a duration exceeding 27 months.

**Contributions.** Our ESPP permits participants to purchase our shares through contributions (in the form of payroll deductions or otherwise to the
extent permitted by the Administrator) of up to 15% of their eligible compensation, which includes participants’ base pay, commissions, overtime and
regular annual, quarterly and monthly cash bonuses payable pursuant to a short-term cash incentive plan and vacation, holiday and sick pay, in each
case, from the Company, Foundation Technology Worldwide LLC, or any of their respective subsidiaries. For any offering period, no participant will be
permitted to purchase more than the lesser of (i) the number shares that is equal to $30,000, divided by the closing transaction price of a share of Class A
common stock on the immediately preceding date prior to the first day of the offering period on which a closing transaction price was reported or
(ii) shares. In addition, in no event during any purchase period may ESPP participants purchase an aggregate number of shares of Class A
common stock that is equal to more than 1% of the sum of (A) the number of shares of Class A common stock and (B) the number of units of FTW (that
are not held by us), in each case, that are outstanding as of the last day of the preceding fiscal year. If such aggregate limitation applies, the number of
shares of Class A common stock purchasable by ESPP participants would be reduced on a pro rata basis in accordance with their respective
contributions during the offering period.

**Exercise of purchase right.** If the Administrator authorizes an offering and purchase period under our ESPP, amounts contributed and accumulated
by the participant during any offering period will be used to purchase our shares at the end of each purchase period established by the Administrator.
Unless otherwise determined by the administrator, the purchase price of the shares will be 85% of the lower of the fair market value of our shares on the
first trading day of each offering period or on the exercise date. Participants may end their participation at any time during an offering period and will be
paid their accrued contributions that have not yet been used to purchase our shares. Participation ends automatically upon termination of employment
with us.

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Effect of certain changes in capitalization.

Subject to any required action by the stockholders of the Company, the maximum number and kind of securities available for purchase under the ESPP, as well as the price per security, the number of securities covered by each option under the ESPP which has not yet been exercised and all limits denominated in shares under the ESPP will be appropriately adjusted in the event of any equity restructuring (within the meaning of applicable accounting rules), such as a stock split, reverse stock split, stock dividend, recapitalization through a large, nonrecurring cash dividend, combination or reclassification of the common stock of the Company. Options intended to qualify under Section 423 of the Code will not be adjusted in a manner that causes such options to fail to so qualify.

Merger or change in control. Our ESPP provides that in the event of a change in control or merger, each outstanding option will be assumed or substituted for, unless it is otherwise provided by the Board or our compensation committee in its sole discretion that either (i) the offering period in progress will end as of a date fixed by the Administrator and each participant is given the right to purchase shares under our ESPP on the last business day of such shortened offering period or (ii) our ESPP will be terminated and all amounts accumulated under our ESPP prior to such termination are returned to participants.

Amendment; termination. The Administrator has the authority to amend, suspend, or terminate our ESPP. Our ESPP automatically will terminate on the tenth anniversary of its effective date, unless we terminate it sooner.

The foregoing summary is not a complete description of all of the terms of our ESPP and is qualified in its entirety by reference to our ESPP, which will be filed as an exhibit to the registration statement of which this prospectus forms a part.

Director Compensation for Fiscal 2019

The following table shows information regarding the compensation earned by our non-employee directors during our fiscal 2019.

<table>
<thead>
<tr>
<th>Name(1)</th>
<th>Fees Earned or Paid in Cash ($)</th>
<th>Stock Awards ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sohail Abbasi</td>
<td>75,000</td>
<td>225,016</td>
<td>—</td>
<td>300,016</td>
</tr>
<tr>
<td>Mary Cranston</td>
<td>75,000</td>
<td>225,016</td>
<td>—</td>
<td>300,016</td>
</tr>
<tr>
<td>Tim Millikin</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Kathy Willard</td>
<td>7,624</td>
<td>225,016</td>
<td>—</td>
<td>232,640</td>
</tr>
<tr>
<td>Jon Winkelried</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Jeff Woolard</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Non-employee directors employed by our Sponsors or Intel do not receive compensation for their services on our board.

(2) Under our non-employee director compensation program, non-employee directors earn cash fees of $18,750 per quarter, payable in arrears. The amounts reported in this column reflect the director fees earned during fiscal 2019. For Ms. Willard, the amount reported in this column reflects the pro-rata portion of the director fees earned by her during fiscal 2019. Mr. Abbasi elected to receive his annual cash retainer in the form of RSUs. The number of shares subject to Mr. Abbasi’s quarterly RSU-in-lieu-of-cash award is determined based upon the most recent board determination of the fair market value of total Company equity, taking into account a valuation analysis most recently performed prior to each quarterly payment. The director fees earned by Mr. Abbasi during fiscal 2019 resulted in the vesting of 1,940 RSUs.

(3) These amounts represent the grant date fair value associated with the grant of RSUs, as computed in accordance with FASB ASC Topic 718. See Note 11 to our consolidated financial statements for a
discussion of the relevant assumptions used in calculating these amounts. As of December 28, 2019, Mr. Abbasi, Ms. Cranston, and Ms. Willard had outstanding RSUs with respect to 9,296 shares, 9,296 shares, and 6,509 shares respectively, and Mr. Abbasi had rights to receive additional RSUs in lieu of his cash retainer as described in footnote (2) above.

**Non-Employee Director Compensation Program Prior to the Offering**

Under our current non-employee director compensation program, each non-employee director who is not employed by TPG, Intel, or Thoma Bravo is eligible to receive an annual cash retainer of $75,000 or, at the election of such non-employee director, a number of RSUs that have a reasonably equivalent value and are paid out at a reasonably equivalent time as the annual retainer in lieu of the cash payment (determined based upon the fair market value of Class A Units at each quarterly vesting date).

Each non-employee director who is not employed by TPG or Intel also receives an annual grant of RSUs with a value of $225,000, with the actual number of RSUs granted determined by the fair market value of Class A Units at the time of grant. These RSUs vest in full on the first anniversary of the grant date, subject to continued service on such vesting date. The RSUs become fully vested upon a change in control event. Eligible non-employee directors are also provided with the opportunity to purchase Class A Units based upon the fair market value at the time of purchase, up to a mutually agreed upon amount.

**New Non-Employee Director Compensation Program**

In connection with this offering, our board of directors is expected to adopt a non-employee director compensation policy covering non-employee directors who are not employed by TPG, Intel or Thoma Bravo or any of their affiliates (each a “Covered Director”), which policy will become effective upon the completion of this offering. Non-employee directors who are employed by TPG, Intel or Thoma Bravo or any of their affiliates are not eligible to receive any compensation in respect of their service to our board of directors. The following summary describes the material terms of our new non-employee director compensation policy.

Each Covered Director will receive an annual cash retainer for service to our board of directors and an additional annual cash retainer for service on any committee of our board of directors or for serving as the chair of our board of directors or any of its committees, in each case, pro-rated for partial years of service, as follows:

<table>
<thead>
<tr>
<th></th>
<th>Board or Committee Member</th>
<th>Board or Committee Chair</th>
</tr>
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<tbody>
<tr>
<td><strong>Annual cash retainer</strong></td>
<td>$75,500</td>
<td>$75,000</td>
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<tr>
<td><strong>Additional annual cash retainer for compensation committee</strong></td>
<td>$7,500</td>
<td>$20,000</td>
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<tr>
<td><strong>Additional annual cash retainer for nominating and governance committee</strong></td>
<td>$5,000</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>Additional annual cash retainer for audit committee</strong></td>
<td>$10,000</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

All cash fees will be payable in arrears on a quarterly basis (or, if earlier, within 30 days following the earlier resignation or removal of the Covered Director).

If approved by the board of directors, each Covered Director may elect to receive vested shares of Class A common stock in lieu of all or a portion of his or her annual cash fees payable under our non-employee director compensation policy on terms that the board of directors or the compensation committee may determine.

Under our new non-employee director policy, commencing in calendar year 2021, on the date of the first meeting of our board of directors following each annual meeting of our stockholders, each Covered Director shall be granted PubCo RSUs having a fair market value of $225,000. The PubCo RSUs shall vest on the earliest of the following to occur: (i) the first anniversary of the date the restricted stock units were granted, (ii) the non-
employee director’s death or permanent disability, or (iii) a change in control (as defined in our 2020 Plan), subject, in each case, to the non-employee
director’s continued service as a member of the board of directors through the applicable vesting date; provided that if our next annual meeting of
stockholders that follows the grant date is less than one year after the prior annual meeting of our stockholders, and the Covered Director continues to
serve on our board of directors through immediately prior to such meeting, but does not stand for re-election, is not elected or is not nominated for re-
election at such meeting, any then unvested PubCo RSUs granted in the immediately preceding 12 months shall accelerate and vest in full as of the
immediately prior to such meeting.

All cash fees will be prorated for any fiscal quarter of partial service, based on the number of calendar days the Covered Director was a member of
the Board or the applicable committee, in a manner determined by the Board or our compensation committee. Covered Directors may also receive
prorated equity awards if they are appointed or elected other than at the Company’s annual meeting of stockholders. In addition, Covered Directors who
served on the board of managers of Foundation Technology Worldwide LLC prior to the IPO will receive a pro-rated grant of PubCo RSUs to cover the
period from the date such Covered Director’s last grant of RSUs of Foundation Technology Worldwide LLC vests (or, if he or she received no such
grant, the date of his or her appointment or election, as applicable) until the Company’s next annual meeting of stockholders, with the manner of
proration and other applicable terms and conditions determined by the Board or our compensation committee.

The aggregate value of cash compensation and the grant date fair value of shares of capital stock of the Company that may be paid or granted
during any fiscal year of the Company will not exceed the amount prescribed in the 2020 Plan (or any successor plan).
CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In addition to the compensation arrangements, including employment, termination of employment and change of control arrangements and indemnification arrangements, discussed in the sections titled “Management” and “Executive Compensation,” the following is a description of each transaction since January 1, 2017 and each currently proposed transaction in which:

- McAfee Corp., Foundation Technology Worldwide LLC, or any of our respective subsidiaries have been or will be a participant;
- the amount involved exceeded or will exceed $120,000; and
- any of our directors, executive officers, or beneficial holders of more than 5% of any class of our capital stock, or their affiliates, or any immediate family member of, or person sharing the household with, any of these individuals, had or will have a direct or indirect material interest.

Related Party Agreements in Effect Prior to this Offering

Management Services Agreement

On April 3, 2017, Foundation Technology Worldwide LLC and certain of its subsidiaries entered into a Management Services Agreement with our Sponsors and Intel, pursuant to which certain affiliates of our Sponsors and Intel (the “Managers”) provide certain management, advisory, consulting, strategic planning, and/or specialized (operational or otherwise) services to the Company. In exchange for these services, the Company is required to pay to the Managers (or their respective designees) an aggregate annual retainer fee equal to $7,500,000, until December 31, 2027. Such annual fee is paid on a quarterly basis in arrears on the 90th day following the end of the applicable quarter. Payments will be made to the Managers on a pro rata basis in accordance with the Managers’ direct or indirect equity ownership of Foundation Technology Worldwide LLC. Under the Management Services Agreement, the Company must also reimburse the Managers for all reasonable and documented out-of-pocket expenses incurred by the Managers or their designees in connection to the services provided by the Managers or their respective designees under the Management Services Agreement, all reasonable and documented out-of-pocket legal expenses incurred by the Managers or their respective designees in connection with the enforcement of rights or taking of actions under the Management Services Agreement, the Subscription Agreement, and related documents or instruments, and all reasonable and documented out-of-pocket expenses incurred by the Managers, their respective affiliates or their respective designees on behalf of the Company. For the 2017 Successor period, fiscal 2018, and fiscal 2019, we paid a total of $7.6 million, $11.9 million, and $12.6 million, respectively, to the Managers under the Management Services Agreement. In addition, we agreed to indemnify the Managers and certain persons affiliated with the Managers from and against any and all actions, causes of action, suits, claims, liabilities, losses, damages and costs, and reasonable out-of-pocket expenses in connection therewith (including, without limitation, attorneys’ fees and expenses) incurred by the Managers and such affiliated persons before or after the date of the Management Services Agreement arising out of any action, cause of action, suit, arbitration, investigation, or claim (whether involving the Company or a third party), or in any way arising out of or relating to operations of, or services provided by any of the Managers or their respective designees to, the Company or its affiliates.

In connection with the completion of this offering, the Management Services Agreement will be terminated, and we will pay a one-time termination fee of $ to the Managers in accordance with the terms of the agreement.

Repurchase of LLC Units

In April 2020, we repurchased 272,793 Class A Units and 27,875 MIUs held by our former Chief Executive Officer upon termination of his employment at a per unit purchase price of $34.57, for an aggregate repurchase price of $10,394,092.76.
In December 2018, we repurchased 62,682 Class A Units and 31,250 MIUs held by our former Executive Vice President and Chief Legal Officer upon termination of her employment at a per unit purchase price of $43.39 and $35.78, respectively, for an aggregate repurchase price of $3,837,896.98.

Agreements to be Entered in Connection with the Reorganization Transactions and this Offering

Amended and Restated Limited Liability Company Agreement of Foundation Technology Worldwide LLC

In connection with the Reorganization Transactions, we will enter into the New LLC Agreement. As a result of the Reorganization Transactions and this offering, we will hold (directly or indirectly) LLC Units in Foundation Technology Worldwide LLC and will be the sole managing member of Foundation Technology Worldwide LLC. Accordingly, we will operate and control all of the business and affairs of Foundation Technology Worldwide LLC and, through Foundation Technology Worldwide LLC and its operating subsidiaries, conduct our business. Pursuant to the LLC Agreement, the Continuing Owners will have the right, from time to time and subject to certain restrictions, to exchange their LLC Units for cash (determined based upon the market price of our Class A common stock) or, at our option, shares of our Class A common stock on a one-for-one basis (and McAfee Corp. will cancel an equal number of shares of Class B common stock to the exchanging member, subject to the succeeding sentence), subject to customary conversion rate adjustments for stock splits, stock dividends, reclassifications, and other similar transactions. The holders of MIUs will also have the right, from time to time and subject to certain restrictions, to exchange their MIUs for LLC Units, which will then be immediately redeemed for shares of Class A common stock, based on the value of such MIUs relative to their applicable distribution threshold.

Tax Receivable Agreement

The contribution by the Continuing Owners and the Management Owners to McAfee Corp. of the equity of certain corporate entities in the Reorganization Transactions and future exchanges of LLC Units for cash or, at our option, shares of our Class A common stock are expected to produce or otherwise deliver to us favorable tax attributes that can reduce our taxable income. Upon the completion of this offering, we will be a party to a tax receivable agreement, under which we generally will be required to pay to the TRA Beneficiaries % of the applicable cash savings, if any, in U.S. federal, state, and local income tax that we actually realize or, in certain circumstances, are deemed to realize as a result of (i) all or a portion of McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) acquired in connection with the Reorganization Transactions, (ii) increases in McAfee Corp.’s allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) and tax basis adjustments in the assets of Foundation Technology Worldwide LLC (and its subsidiaries) as a result of sales or exchanges of LLC Units after this offering, (iii) certain tax attributes of the corporations McAfee Corp. acquires in connection with the Reorganization Transactions (including their allocable share of existing tax basis in the assets of Foundation Technology Worldwide LLC (and its subsidiaries)), and (iv) certain other tax benefits related to entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. We generally will retain the benefit of the remaining % of the applicable tax savings.

Pursuant to the exchange mechanics, from time to time we may be required to acquire LLC Units of Foundation Technology Worldwide LLC from the holders thereof in exchange for cash or, at our option, shares of our Class A common stock. An exchange of LLC Units is intended to be treated as a purchase of such LLC Units for U.S. federal income tax purposes. Each of Foundation Technology Worldwide LLC and McAfee Finance 2, LLC, a subsidiary of Foundation Technology Worldwide LLC intended to be treated as a partnership for U.S. federal income tax purposes and through which Foundation Technology Worldwide LLC owns its interests in the assets of the McAfee business, intends to have an election under Section 754 of the Code in effect for taxable years in which such sales or exchanges of LLC Units occur. Pursuant to the Section 754 election, sales of LLC Units are expected to result in an increase in the tax basis of tangible and intangible assets of Foundation Technology Worldwide LLC and certain of its subsidiaries, including McAfee Finance 2, LLC.
When we acquire LLC Units from the Continuing LLC Owners, we expect that both the existing basis for certain assets and the anticipated basis adjustments will increase depreciation and amortization deductions allocable to us for tax purposes from Foundation Technology Worldwide LLC, and therefore reduce the amount of income tax we would otherwise be required to pay in the future to various tax authorities. This increase in tax basis may also decrease gain (or increase loss) on future dispositions of certain assets of Foundation Technology Worldwide LLC and its subsidiaries to the extent increased tax basis is allocated to those assets.

**Stockholders Agreement**

In connection with this offering, we intend to enter into a stockholders agreement with investment funds affiliated with our Sponsors, Intel, and certain other stockholders. Pursuant to the stockholders agreement, we will be required to take all necessary action to cause the board of directors and its committees to include director candidates designated by TPG and Intel in the slate of director nominees recommended by the board of directors for election by our stockholders. These nomination rights are described in this prospectus in the sections titled “Management—Board Composition and Director Independence” and “Management—Board Committees.” The stockholders agreement will also provide that we will obtain customary director indemnity insurance. Pursuant to the stockholders agreement, each of TPG, Intel, and Thoma Bravo also agree to certain standstill provisions pursuant to which it is restricted from, among other things, acquiring our securities if that would result in it owning more than 49% of our outstanding voting power without our consent.

**Registration Rights Agreement**

We intend to enter into a registration rights agreement with our Sponsors, Intel, certain other stockholders, and our Chief Executive Officer in connection with this offering. The registration rights agreement will provide the stockholders party thereto certain registration rights as described below.

**Demand registration rights**

At any time after the completion of this offering, each of our Sponsors and Intel will have the right to demand that we file registration statements. These registration rights are subject to specified conditions and limitations, including the right of the underwriters, if any, to limit the number of shares included in any such registration under specified circumstances. Upon such a request, we will be required to use reasonable best efforts to promptly effect the registration.

**Piggyback registration rights**

At any time after the completion of this offering, if we propose to register any shares of our equity securities under the Securities Act either for our own account or for the account of any other person, then the parties to the registration rights agreement will be entitled to notice of the registration and will be entitled to include their shares of Class A common stock in the registration statement. These piggyback registration rights are subject to specified conditions and limitations, including the right of the underwriters, if any, to limit the number of shares included in any such registration under specified circumstances.

**Shelf registration rights**

At any time after we become eligible to file a registration statement on Form S-3, our Sponsors and Intel will be entitled to have their shares of Class A common stock registered by us on a Form S-3 registration statement at our expense. These shelf registration rights are subject to specified conditions and limitations.

**Expenses and indemnification**

We will pay all expenses relating to any demand, piggyback or shelf registration, other than underwriting discounts and commissions and any transfer taxes, subject to specified conditions and limitations. The
registration rights agreement will include customary indemnification provisions, including indemnification of the participating holders of shares of Class A common stock and their directors, officers and employees by us for any losses, claims, damages or liabilities in respect thereof and expenses to which such holders may become subject under the Securities Act, state law or otherwise.

**Indemnification Agreements**

Prior to the completion of this offering, we expect to enter into indemnification agreements with each of our directors. These agreements will require us to indemnify these individuals and, in certain cases, affiliates of such individuals, to the fullest extent permissible under Delaware law against liabilities that may arise by reason of their service to us or at our direction, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, we have been informed that in the opinion of the SEC such indemnification is against public policy and is therefore unenforceable.

**Certain Relationships**

From time to time, Intel, our Sponsors and/or their affiliates have entered into, and may continue to enter into, arrangements with us to use our products and services. We believe that all such arrangements (other than transactions pursuant to a commercial services agreement) have been entered into in the ordinary course of business and have been negotiated on commercially reasonable terms.

**Related Party Transactions Policy**

In connection with this offering, we have adopted a policy with respect to the review, approval, and ratification of related person transactions. Under the policy, our audit committee is responsible for reviewing and approving related person transactions. In the course of its review and approval of related person transactions, our audit committee will consider the relevant facts and circumstances to decide whether to approve such transactions. Related person transactions must be approved or ratified by the audit committee based on full information about the proposed transaction and the related person’s interest.
The following table sets forth information with respect to the beneficial ownership of our Class A common stock and Class B common stock as of
for (a) each person, or group of affiliated persons, known by us to own beneficially more than 5% of our outstanding shares of Class A
common stock and Class B common stock, (b) each member of our board of directors, (c) each of our named executive officers, (d) all of our directors
and executive officers as a group, and (e) each of the selling stockholders.

Beneficial ownership is determined in accordance with SEC rules. The information is not necessarily indicative of beneficial ownership for any
other purpose. In general, under these rules a beneficial owner of a security includes any person who, directly or indirectly, through any contract,
arrangement, understanding, relationship, or otherwise has or shares voting power or investment power with respect to such security. A person is also
deemed to be a beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within 60 days. To our
knowledge, except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and
investment power with respect to all shares of Class A common stock and Class B common stock beneficially owned by that person.

In connection with the Reorganization Transactions, we will issue to the Continuing Owners one share of our Class B common stock for each LLC
Unit that they hold. Each Continuing LLC Owner will have the right to exchange their LLC Units for cash (based upon the market price of the shares of
our Class A common stock) or, at our option, for shares of our Class A common stock on a one-for-one basis (and McAfee Corp. will cancel an equal
number of shares of Class B common stock to the exchanging member). See “The Reorganization Transactions” and “Certain Relationships and Related
Party Transactions.”
The percentage of shares beneficially owned is computed on the basis of shares of our Class A common stock outstanding as of , and LLC Units and shares of our Class B common stock outstanding as of . Shares of our Class A common stock that a person has the right to acquire within 60 days of (including the right to exchange for cash or (at our option) for Class A common stock as described above) are deemed outstanding for purposes of computing the percentage ownership of such person’s holdings, but are not deemed outstanding for purposes of computing the percentage ownership of any other person, except with respect to the percentage ownership of all directors and executive officers as a group. The amount of shares of Class A and Class B common stock beneficially owned after the offering reflects the use of a portion of the net proceeds that we will receive from this offering to directly or indirectly purchase issued and outstanding LLC Units and an equal number of Class B common stock from certain Continuing LLC Owners. Unless otherwise indicated below, the address for each beneficial owner listed is c/o McAfee Corp., 6220 America Center Drive, San Jose, California 95002.

<table>
<thead>
<tr>
<th>Name of beneficial owner</th>
<th>Shares of Class A common stock beneficially owned</th>
<th>Shares of Class A common stock being offered</th>
<th>Percentage of shares of Class A common stock beneficially owned</th>
<th>Shares of Class B common stock beneficially owned</th>
<th>Percentage of shares of Class B common stock beneficially owned</th>
<th>Total voting power after offering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Named executive officers and directors:</td>
<td></td>
<td></td>
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<tr>
<td>Peter Leav(2)</td>
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<td>Venkat Bhamidipati(3)</td>
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<td>Ashutosh Kulkarni(4)</td>
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<td>Terry Hicks(5)</td>
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<tr>
<td>Lynne Doherty McDonald(6)</td>
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<tr>
<td>Jon Winkelried(7)</td>
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<td>Tim Milliken(7)</td>
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<tr>
<td>Mary Cranston</td>
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<tr>
<td>Sohaib Abbasi</td>
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<tr>
<td>Kathy Willard</td>
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<td>Jeff Woolard</td>
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<tr>
<td>All directors and executive officers as a group (13 people)(8)</td>
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</table>

Greater than 5% Stockholders:

- Entities affiliated with Intel(9)
- Manta Holdings L.P.(10)

Selling Stockholders:

* Represents beneficial ownership of less than 1%.
(1) The LLC Units held by Continuing Owners are exchangeable for cash or, at our option, shares of our Class A common stock on a one-for-one basis. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Exchange Mechanics.” In these tables, beneficial ownership of LLC Units has been reflected as beneficial ownership of shares of our Class A common stock for which such LLC Units may be exchanged. When a LLC Unit is exchanged for cash or, at our option, Class A common stock by a Continuing LLC Owner who holds shares of Class B common stock, a corresponding share of Class B common stock will be cancelled. Accordingly, in the first table above, the percentages of Class A common stock provided also reflect combined voting power for each respective beneficial owner. See “Description of Capital Stock.”
(2) Includes shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by Mr. Leav that have vested or will vest within 60 days.
(3) Includes shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by Mr. Bhamidipati that have vested or will vest within 60 days.
Includes shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by Mr. Kulkarni that have vested or will vest within 60 days.

Includes shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by Mr. Hicks that have vested or will vest within 60 days.

Includes shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by Ms. Doherty McDonald that have vested or will vest within 60 days.

Does not include shares of Class A common stock beneficially owned by entities affiliated with TPG. Mr. Winkelried is Co-Chief Executive Officer and Partner of TPG. Mr. Millikin is a Partner of TPG. The address of each of Messrs. Winkelried and Millikin is c/o TPG Capital, 345 California Street, Suite 3300, San Francisco, California 94104.

Includes shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by our current directors, our current executive officers, and our named executive officers for fiscal 2019 as a group that have vested or will vest within 60 days.

Includes shares of Class B common stock held by .

Manta Holdings L.P. is the entity in which our Sponsors hold their equity interests in us, including shares of Class A common stock underlying an identical number of LLC Units and shares of Class B common stock held by .
DESCRIPTION OF CERTAIN INDEBTEDNESS

The following is a summary of certain of our indebtedness that is currently outstanding. This summary does not purport to be complete and is qualified by reference to the agreements and related documents referred to herein, copies of which have been filed as exhibits to the registration statement of which this prospectus is a part, and may be obtained under “Where You Can Find More Information” in this prospectus.

First Lien Credit Facilities

General

On September 29, 2017, McAfee, LLC (the “Borrower”) entered into a First Lien Credit Agreement among the Borrower, the other credit parties party thereto, Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent (the “First Lien Agent”) and the lenders from time to time party thereto. Prior to amendments in January 2018, November 2018, and June 2019, the First Lien Credit Agreement provided for a U.S. dollar-denominated First Lien USD Term Loan tranche of $2,555 million, a Euro-denominated First Lien EUR Term Loan tranche of €507 million, and a $500 million Revolving Credit Facility (the “First Lien Credit Facilities”). The First Lien Credit Agreement was amended: (x) on January 3, 2018 to increase the amount of the First Lien USD Term Loan by $324 million and the First Lien EUR Term Loan by €150 million; (y) on November 1, 2018 to make changes to the pricing terms and to increase the amount of the First Lien EUR Term Loan by €46 million to prepay $50 million of the Second Lien Term Loan (as defined below); and (z) on June 13, 2019 to increase the amount of the First Lien USD Term Loan by $300 million and the First Lien EUR Term Loan by €355 million. The Revolving Credit Facility includes a $50 million sublimit for the issuance of letters of credit. As of June 27, 2020, the aggregate outstanding principal amount of the First Lien USD Term Loan and the First Lien EUR Term Loan were $3,048 million and €1,078 million, respectively. As of June 27, 2020, we had $496 million of unused borrowing capacity under our revolving credit facility.

The First Lien Credit Agreement provides us the right to request additional commitments for new incremental term loans and revolving loans, in an aggregate principal amount not to exceed (w) $500 million (the “First Lien Fixed Basket”) less the amount of any other incremental borrowings incurred in reliance on that amount or the Second Lien Fixed Basket (as defined below), plus (x) in the case of any incremental facilities that serve to effectively extend the maturity of, or refinance or replace any term loans or revolving commitments, an amount equal to the reductions in the term loans or commitments to be replaced thereby or terminated, plus (y) the amount of certain voluntary prepayments, redemptions, or repurchases of any term loans and/or previously incurred incremental equivalent debt and any permanent reduction of the commitments under any revolving facility or incremental equivalent debt consisting of a revolving credit facility, plus (z) an unlimited amount (the “First Lien Ratio Basket”) so long as (1) if such incremental indebtedness is secured by a lien on the collateral on a pari passu basis with the First Lien Credit Facilities, (i) we are in compliance on a pro forma basis with a first lien net leverage ratio of no greater than 4.75:1.00 or (ii) if such incremental indebtedness is incurred in connection with an acquisition or other similar investment permitted under the First Lien Credit Agreement, the first lien net leverage ratio would not be greater on a pro forma basis after giving effect to such acquisition or similar investment than the first lien net leverage ratio immediately prior to the incurrence of such incremental indebtedness, (2) if such incremental indebtedness is secured by a lien on the collateral by a lien that is junior to the lien securing the First Lien Credit Facilities, (i) we are in compliance on a pro forma basis with a secured net leverage ratio of no greater than 5.75:1.00 (ii) if such incremental indebtedness is incurred in connection with an acquisition or other similar investment permitted under the First Lien Credit Agreement, the secured net leverage ratio would not be greater on a pro forma basis after giving effect to such acquisition or similar investment than the secured net leverage ratio immediately prior to the incurrence of such incremental indebtedness, or (3) if such incremental indebtedness is unsecured, (i) we are in compliance on a pro forma basis with a total net leverage ratio of no greater than 6.00:1.00 or (ii) if such incremental indebtedness is incurred in connection with an acquisition or other similar investment permitted under the First Lien Credit Agreement, the total net leverage ratio would not be greater on a pro forma basis after giving effect to such acquisition or similar investment than
the total net leverage ratio immediately prior to the incurrence of such incremental indebtedness; provided that amounts borrowed under the First Lien Fixed Basket may later be reclassified as having been borrowed under the First Lien Ratio Basket. In addition, the First Lien Credit Agreement provides that we have the right to replace and extend existing loans or commitments with new commitments from existing or new lenders under the First Lien Credit Agreement. The lenders under the First Lien Credit Facilities are not under any obligation to provide any such additional commitments, and any increase in, or replacement or extension of, commitments is subject to customary conditions precedent and limitations.

The commitments under the Revolving Credit Facility will mature on September 29, 2022, and the First Lien Term Loans will mature on September 29, 2024.

**Amortization, Interest Rates and Fees**

The First Lien Term Loans require equal quarterly repayments of, (1) with respect to the First Lien USD Term Loan, $7,756,303.62 and, (2) with respect to the First Lien EUR Term Loan, €2,743,965.25.

The borrowings under the Revolving Credit Facility bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 3.75% or (2) a base rate plus an applicable margin of 2.75%. The applicable margins for Eurodollar rate and base rate borrowings are subject to reductions to 3.50% and 3.25% and 2.50% and 2.25%, respectively, based on our first lien net leverage ratio. The Eurodollar rate applicable to the Revolving Credit Facility is subject to a “floor” of 0.00%.

The borrowings under the First Lien USD Term Loan bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 3.75% or (2) a base rate plus an applicable margin of 2.75%. The borrowings under the First Lien EUR Term Loan bear interest at a floating rate which is a EURIBOR rate for a specified interest period plus an applicable margin of 3.50%. The Eurodollar rate and EURIBOR rate applicable to the First Lien Term Loans are subject to a “floor” of 0.00%.

The base rate for any day is a fluctuating rate per annum equal to the highest of (a) the federal funds effective rate in effect on such day, plus 0.50%, (b) the rate of interest in effect for such day as publicly announced by the First Lien Agent as its “prime rate,” and (c) the Eurodollar rate with a one-month interest period plus 1.00%. The base rate applicable to the First Lien USD Term Loan is subject to a “floor” of 1.00%.

In addition to paying interest on loans outstanding under the Revolving Credit Facility and the First Lien Term Loans, we are required to pay a commitment fee of 0.50% per annum of unused commitments under the Revolving Credit Facility. The commitment fee is subject to reductions to 0.375% per annum and 0.25% per annum based on our first lien net leverage ratio. We are also required to pay letter of credit fees on the maximum amount available to be drawn under all outstanding letters of credit in an amount equal to the applicable margin for Eurodollar loans under the Revolving Credit Facility on a per annum basis. We are also required to pay customary fronting fees and other customary documentary fees in connection with the issuance of letters of credit.

**Voluntary Prepayments**

We are permitted to voluntarily prepay or repay outstanding loans under the Revolving Credit Facility or First Lien Term Loans at any time, in whole or in part, subject to prior written notice, minimum amount requirements, and customary “breakage” costs with respect to Eurodollar loans. Amounts prepaid under the Revolving Credit Facility may subsequently be reborrowed.

We are permitted to reduce commitments under the Revolving Credit Facility at any time, in whole or in part, subject to minimum amounts.
Mandatory Prepayments

The First Lien Credit Agreement requires us to prepay, subject to certain exceptions, the First Lien Term Loans with:

- 100% of net cash proceeds above a threshold amount of certain asset sales and casualty events, subject to (i) step-downs to (x) 50% if our first lien net leverage ratio is less than or equal to 3.25 to 1.00, but greater than 2.50 to 1.00 and (y) 0% if our first lien net leverage ratio is less than or equal to 2.50 to 1.00 and (ii) reinvestment rights and certain other exceptions;

- 100% of net cash proceeds of the incurrence of certain debt, other than certain debt permitted under the First Lien Credit Agreement; and

- 50% of annual excess cash flow, subject to (i) a step-down to 25% if our first lien net leverage ratio is less than or equal to 3.25 to 1.00, but greater than 2.50 to 1.00, and (ii) a step-down to 0% if our first lien net leverage ratio is less than or equal to 2.50 to 1.00; provided that such a prepayment is required only in the amount (if any) by which such prepayment exceeds $35 million in such fiscal year.

Guarantees

Subject to certain exceptions, all obligations under the First Lien Credit Agreement, including certain hedging and cash management arrangements, are jointly and severally, fully and unconditionally, guaranteed on a senior secured basis by each of McAfee Finance 2, LLC and certain of the Borrower’s existing and future direct and indirect domestic subsidiaries (other than unrestricted subsidiaries, our joint ventures, subsidiaries prohibited by applicable law from becoming guarantors, immaterial subsidiaries, and certain other exempted subsidiaries).

Security

Our obligations and the obligations of the guarantors of our obligations under the First Lien Credit Facilities are secured by perfected first priority pledges of and security interests in (i) substantially all of the existing and future equity interests of our and each guarantor’s material wholly-owned restricted domestic subsidiaries and 65% of the equity interests in the material restricted first-tier foreign subsidiaries held by the Borrower or the guarantors of our obligations under the First Lien Credit Facilities and (ii) substantially all of the Borrower’s and each guarantor’s tangible and intangible assets, in each case, subject to certain exceptions.

Certain Covenants

The First Lien Credit Agreement contains a number of covenants that, among other things, restrict, subject to certain exceptions, our ability to:

- incur additional indebtedness;
- create or incur liens;
- engage in consolidations, amalgamations, mergers, liquidations, dissolutions, or dispositions;
- pay dividends and distributions on, or purchase, redeem, defease, or otherwise acquire or retire for value, our capital stock;
- create negative pledges or restrictions on the payment of dividends or payment of other amounts owed from subsidiaries;
- sell, transfer or otherwise dispose of assets, including capital stock of subsidiaries;
- make prepayments or repurchases of debt that is contractually subordinated with respect to right of payment or security;
engage in certain transactions with affiliates;
• modify certain documents governing debt that is subordinated with respect to right of payment;
• change our fiscal year; and
• change our material lines of business.

In addition, the First Lien Credit Agreement includes a financial covenant which requires that, at the end of each fiscal quarter, for so long as the aggregate principal amount of borrowings under the Revolving Credit Facility exceeds 35% of the aggregate commitments under the Revolving Credit Facility, our first lien net leverage ratio cannot exceed 6.30 to 1.00. A breach of this financial covenant will not result in a default or event of default under the First Lien Term Loans unless and until the lenders under the Revolving Credit Facility have terminated the commitments under the Revolving Credit Facility and declared the borrowings under the Revolving Credit Facility due and payable.

**Events of Defaults**

The First Lien Credit Agreement includes certain customary events of default, including, among others, failure to pay principal, interest or other amounts; material inaccuracy of representations and warranties; violation of covenants; specified cross-default and cross-acceleration to other material indebtedness; certain bankruptcy and insolvency events; certain Employee Retirement Income Security Act of 1974 ("ERISA") events; certain undischarged judgments; material invalidity of guarantees or grant of security interest; and change of control.

**Second Lien Credit Facility**

**General**

On September 29, 2017, the Borrower entered into a Second Lien Credit Agreement among the Borrower, the other credit parties party thereto, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (the "Second Lien Agent") and the lenders from time to time party thereto. The Second Lien Credit Agreement provides for a U.S. dollar-denominated Second Lien Term Loan tranche of $600 million (the "Second Lien Credit Facility" and, together with the First Lien Credit Facilities, the "Senior Secured Credit Facilities"). As of June 27, 2020, the aggregate outstanding principal amount of the Second Lien Term Loan was $525 million, which does not reflect the repayment of approximately $ million of the Second Lien Term Loan using a portion of the net proceeds from this offering.

The Second Lien Credit Agreement provides us the right to request additional commitments for new incremental term loans in an aggregate principal amount not to exceed (w) $500 million (the "Second Lien Fixed Basket") less the amount of any other incremental borrowings incurred in reliance on that amount or the First Lien Fixed Basket, plus (x) in the case of any incremental facilities that serve to effectively extend the maturity, or refinance or replace, any existing term loans or commitments, an amount equal to the reductions in the term loans or commitments to be replaced thereby or terminated, plus (y) the amount of certain voluntary prepayments, redemptions or repurchases of any term loans and/or previously incurred incremental equivalent debt and any permanent reduction of the commitments under any revolving facility or incremental equivalent debt consisting of a revolving credit facility, plus (z) an unlimited amount (the "Second Lien Ratio Basket") so long as (1) if such incremental indebtedness is secured by a lien on the collateral, (i) we are in compliance on a pro forma basis with a secured net leverage ratio of no greater than 5.75:1.00 or (ii) if such incremental indebtedness is incurred in connection with an acquisition or other similar investment permitted under the Second Lien Credit Agreement, the secured net leverage ratio would not be greater on a pro forma basis after giving effect to such acquisition or similar investment than the secured net leverage ratio immediately prior to the incurrence of such incremental indebtedness or (2) if such incremental indebtedness is unsecured, (i) we are in compliance on a pro forma basis with a total net leverage ratio of no greater than 6.00:1.00; or (ii) if such
incremental indebtedness is incurred in connection with an acquisition or other similar investment permitted under the Second Lien Credit Agreement, the total net leverage ratio would not be greater on a pro forma basis after giving effect to such acquisition or similar investment than the total net leverage ratio immediately prior to the incurrence of such incremental indebtedness; provided that amounts borrowed under the Second Lien Fixed Basket may later be reclassified as having been borrowed under the Second Lien Ratio Basket. In addition, the Second Lien Credit Agreement provides that we have the right to replace and extend existing loans or commitments with new commitments from existing or new lenders under the Second Lien Credit Agreement. The lenders under the Second Lien Credit Agreement are not under any obligation to provide any such additional commitments, and any increase in, or replacement or extension of, commitments is subject to customary conditions precedent and limitations. The Second Lien Term Loan will mature on September 29, 2025.

**Interest Rates and Fees**

The borrowings under the Second Lien Credit Agreement bear interest at a floating rate which can be, at our option, either (1) a Eurodollar rate for a specified interest period plus an applicable margin of 8.50% or (2) a base rate plus an applicable margin of 7.50%. The Eurodollar rate applicable to the Second Lien Credit Facility is subject to a “floor” of 1.00%. The base rate applicable to the Second Lien Credit Facility is subject to a “floor” of 2.00%.

The base rate for any day is a fluctuating rate per annum equal to the highest of (a) the federal funds effective rate in effect on such day, plus 0.50%, (b) the rate of interest in effect for such day as publicly announced by the Second Lien Agent as its “prime rate,” and (c) the Eurodollar rate with a one-month interest period plus 1.00%.

**Voluntary Prepayments**

We are permitted to voluntarily prepay or repay outstanding loans under the Second Lien Credit Facility at any time, in whole or in part, subject to prior written notice, minimum amount requirements, and customary “breakage” costs with respect to Eurodollar loans.

**Mandatory Prepayments**

The Second Lien Credit Agreement requires us to prepay, subject to certain exceptions, the Second Lien Term Loan with:

- 100% of net cash proceeds above a threshold amount of certain asset sales and casualty events, subject to (i) step-downs to (x) 50% if our secured net leverage ratio is less than or equal to 4.25 to 1.00, but greater than 3.50 to 1.00 and (y) 0% if our secured net leverage ratio is less than or equal to 3.50 to 1.00 and (ii) reinvestment rights and certain other exceptions;
- 100% of net cash proceeds of the incurrence of certain debt, other than certain debt permitted under the Second Lien Credit Agreement; and
- 50% of annual excess cash flow, subject to (i) a step-down to 25% if our secured net leverage ratio is less than or equal to 4.25 to 1.00, but greater than 3.50 to 1.00, and (ii) a step-down to 0% if our secured net leverage ratio is less than or equal to 3.50 to 1.00; provided that such a prepayment is required only in the amount (if any) by which such prepayment exceeds $35 million in such fiscal year.

Such mandatory prepayments of the Second Lien Credit Agreement (other than with respect to net cash proceeds of the incurrence of certain refinancing indebtedness) are required only (i) if the First Lien Term Loans (and any refinancing thereof) have been paid in full or (ii) with net cash proceeds of asset sales or casualty events or excess cash flow that have been declined by any lender under the First Lien Term Loans.
Guarantees
Subject to certain exceptions, all obligations under the Second Lien Credit Agreement are jointly and severally, fully and unconditionally, guaranteed on a secured basis by each of McAfee Finance 2, LLC and certain of the Borrower’s existing and future direct and indirect domestic subsidiaries (other than unrestricted subsidiaries, our joint ventures, subsidiaries prohibited by applicable law from becoming guarantors, immaterial subsidiaries, and certain other exempted subsidiaries).

Security
Our obligations and the obligations of the guarantors of our obligations under the Second Lien Credit Agreement are secured by perfected second priority pledges of and security interests in (i) substantially all of the existing and future equity interests of our and each guarantor’s material wholly-owned restricted domestic subsidiaries and 65% of the equity interests in the material restricted first-tier foreign subsidiaries held by the Borrower or the guarantors of our obligations under the Second Lien Credit Agreement and (ii) substantially all of the Borrower’s and each guarantor’s tangible and intangible assets, in each case subject to certain exceptions.

Certain Covenants
The Second Lien Credit Agreement contains a number of covenants that, among other things, restrict, subject to certain exceptions, our ability to:

- incur additional indebtedness;
- create or incur liens;
- engage in consolidations, amalgamations, mergers, liquidations, dissolutions, or dispositions;
- pay dividends and distributions on, or purchase, redeem, defease, or otherwise acquire or retire for value, our capital stock;
- make acquisitions, investments, loans (including guarantees), advances, or capital contributions;
- create negative pledges or restrictions on the payment of dividends or payment of other amounts owed from subsidiaries;
- sell, transfer, or otherwise dispose of assets, including capital stock of subsidiaries;
- make prepayments or repurchases of debt that is contractually subordinated with respect to right of payment or security;
- engage in certain transactions with affiliates;
- modify certain documents governing debt that is subordinated with respect to right of payment;
- change our fiscal year; and
- change our material lines of business.

Events of Defaults
The Second Lien Credit Agreement includes certain customary events of default, including, among others, failure to pay principal, interest or other amounts; material inaccuracy of representations and warranties; violation of covenants; specified cross-default and cross-acceleration to other material indebtedness; certain bankruptcy and insolvency events; certain ERISA events; certain undischarged judgments; material invalidity of guarantees or grant of security interest; and change of control.
DESCRIPTION OF CAPITAL STOCK

General

The following description of our capital stock is intended as a summary only and is qualified in its entirety by reference to our certificate of incorporation and bylaws to be in effect at the completion of this offering, which are filed as exhibits to the registration statement of which this prospectus forms a part, and to the applicable provisions of Delaware law. Under “Description of Capital Stock,” “we,” “us,” “our,” “McAfee,” and “our Company” refer to McAfee Corp.

As of the consummation of this offering, our authorized capital stock will consist of shares of Class A common stock, par value $0.001 per share, shares of Class B common stock, par value $0.001 per share, and shares of preferred stock, par value $0.001 per share. Upon the completion of this offering, there will be shares of our Class A common stock issued and outstanding and shares of our Class B common stock issued and outstanding. See “The Reorganization Transactions.”

Common Stock

Voting Rights. Holders of our Class A common stock and Class B common stock will be entitled to cast one vote per share on all matters submitted to stockholders for their approval. Holders of our Class A common stock and Class B common stock will not be entitled to cumulate their votes in the election of directors. Holders of our Class A common stock and Class B common stock will vote together as a single class on all matters submitted to stockholders for their vote or approval, except with respect to the amendment of certain provisions of our certificate of incorporation that would alter or change the powers, preferences or special rights of the Class B common stock so as to affect them adversely, which amendments must be approved by a majority of the votes entitled to be cast by the holders of the Class B common stock, voting as a separate class, or as otherwise required by applicable law. The voting power of the outstanding Class B common stock (expressed as a percentage of the total voting power of all common stock) will be equal to the percentage of LLC Units not held directly or indirectly by McAfee Corp. Shares of Class B common stock will be canceled on a one-for-one basis upon the exchange of LLC Units for shares of Class A common stock, and accordingly, the voting power afforded to holders of LLC Units by their shares of Class B common stock will automatically be reduced as the number of LLC Units held by such holder of Class B common stock decreases.

Generally, all matters to be voted on by stockholders must be approved by a majority of the votes entitled to be cast on a matter by stockholders (or, in the case of election of directors, by a plurality), voting together as a single class. Delaware law would require our Class A stockholders and Class B stockholders to vote separately as a single class in the following circumstances:

• if we amend our amended and restated certificate of incorporation to increase the authorized shares of a class of stock, or to increase or decrease the par value of a class of stock, then such class would be required to vote separately to approve the proposed amendment; or

• if we amend our amended and restated certificate of incorporation in a manner that alters or changes the powers, preferences or special rights of a class of stock in a manner that affects holders of such class of stock adversely, then such class would be required to vote separately to approve such proposed amendment.

Except as otherwise provided by law, amendments to the certificate of incorporation must be approved by a majority or, in some cases, a super-majority of the combined voting power of all shares entitled to vote, voting together as a single class.

Dividend Rights. Holders of Class A common stock will share ratably (based on the number of shares of Class A common stock held) if and when any dividend is declared by the board of directors out of funds legally
available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock. The holders of shares of our Class B common stock will not have any right to receive dividends other than dividends consisting of shares of our Class B common stock paid proportionally with respect to each outstanding share of our Class B common stock.

**Liquidation Rights.** On our liquidation, dissolution, or winding up and after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, each holder of Class A common stock will be entitled to a pro rata distribution of any assets available for distribution to common stockholders. Other than their par value, the holders of shares of our Class B common stock will not have any right to receive a distribution upon a liquidation or dissolution of our Company.

**Other Matters.** No shares of Class A common stock or Class B common stock will be subject to redemption or have preemptive rights to purchase additional shares of Class A common stock or Class B common stock. Holders of shares of our Class A common stock and Class B common stock do not have subscription, redemption or conversion rights. There will be no redemption or sinking fund provisions applicable to the Class A common stock or Class B common stock. Upon consummation of this offering, all the outstanding shares of Class A common stock and Class B common stock will be validly issued, fully paid, and non-assessable.

**Transfers of Class B Common Stock.** Pursuant to our amended and restated certificate of incorporation and the New LLC Agreement, each holder of Class B common stock agrees that:

- the holder will not transfer any shares of Class B common stock to any person unless the holder transfers an equal number of LLC Units to the same person; and
- in the event the holder transfers any LLC Units to any person, the holder will transfer an equal number of shares of Class B common stock to the same person.

**Preferred Stock**

Our board of directors may, without further action by our stockholders, from time to time, direct the issuance of shares of preferred stock in series and may, at the time of issuance, determine the designations, powers, preferences, privileges and relative participating, optional or special rights, as well as the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of the Class A common stock. Satisfaction of any dividend preferences of outstanding shares of preferred stock would reduce the amount of funds available for the payment of dividends on shares of our Class A common stock. Holders of shares of preferred stock may be entitled to receive a preference payment in the event of our liquidation before any payment is made to the holders of shares of our Class A common stock. Under certain circumstances, the issuance of shares of preferred stock may render more difficult or tend to discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a large block of our securities or the removal of incumbent management. Upon the affirmative vote of a majority of the total number of directors then in office, our board of directors, without stockholder approval, may issue shares of preferred stock with voting and conversion rights which could adversely affect the holders of shares of our Class A common stock and the market value of our Class A common stock. Upon consummation of this offering, there will be no shares of preferred stock outstanding, and we have no present intention to issue any shares of preferred stock.

**Stockholders Agreement**

In connection with this offering, we intend to enter into a stockholders agreement with Intel, investment funds affiliated with our Sponsors, and certain other stockholders pursuant to which such parties will have specified board representation rights, governance rights and other rights. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Stockholders Agreement.”
Registration Rights

Following the completion of this offering, Intel, certain investment funds affiliated with our Sponsors, certain other stockholders, and our Chief Executive Officer will be entitled to rights with respect to the registration of shares of Class A common stock, including shares received in exchange for a corresponding number of LLC Units and shares of Class B common stock under the Securities Act. These registration rights will be contained in our registration rights agreement. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Registration Rights Agreement.”

Anti-Takeover Effects of Our Certificate of Incorporation and Our Bylaws

Our certificate of incorporation and our bylaws contain provisions that may delay, defer or discourage another party from acquiring control of us. We expect that these provisions will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with the board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they may also discourage acquisitions that some stockholders may favor.

These provisions include:

- **Classified board.** Our amended and restated certificate of incorporation provides that our board of directors is divided with respect to the time for which directors severally hold office into three classes of directors. As a result, approximately one-third of our board of directors is elected each year. The classification of directors has the effect of making it more difficult for stockholders to change the composition of our board. Our board of directors is currently composed of seven members.

- **No cumulative voting.** The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless the certificate of incorporation specifically authorizes cumulative voting. Our amended and restated certificate of incorporation does not authorize cumulative voting.

- **Requirements for removal of directors.** Directors may only be removed for cause; provided, however, TPG or Intel may remove any director nominated by TPG or Intel, respectively, without cause upon affirmative vote of the holders of a majority of the outstanding voting power.

- **Advance notice procedures.** Our bylaws establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to the board of directors. Stockholders at an annual meeting will only be able to consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the board of directors or by a stockholder who was a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has given our secretary timely written notice, in proper form, of the stockholder’s intention to bring that business before the meeting. Although our bylaws do not give the board of directors the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, the bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of our Company.

- **Actions by written consent; special meetings of stockholders.** Our amended and restated certificate of incorporation provides that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting. Our amended and restated certificate of incorporation also provides that, except as otherwise required by law, special meetings of the stockholders can only be called by or at the direction of the board of directors pursuant to a resolution approved by a majority of the entire board of directors.
Supermajority approval requirements. Certain amendments to our certificate of incorporation and shareholder amendments to our bylaws will require the affirmative vote of at least 66 2/3% of the voting power of the outstanding shares of our capital stock entitled to vote thereon.

Authorized but unissued shares. Our authorized but unissued shares of common and preferred stock are available for future issuance without stockholder approval. The existence of authorized but unissued shares of preferred stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

Exclusive Forum

Our amended and restated certificate of incorporation requires, to the fullest extent permitted by law, that (i) derivative actions or proceedings brought on behalf of the Company, (ii) actions against directors, officers and employees asserting a claim of breach of a fiduciary duty owed to the Company or the Company’s stockholders, (iii) actions asserting a claim against the Company arising pursuant to the DGCL or the Company’s amended and restated certificate of incorporation or bylaws, (iv) actions to interpret, apply, enforce or determine the validity of the Company’s amended and restated certificate of incorporation or bylaws or (v) actions asserting a claim against the Company governed by the internal affairs doctrine, may be brought only in specified courts in the State of Delaware. Our amended and restated certificate of incorporation also provides that the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action against us or any of our directors, officers, employees or agents and arising under the Securities Act. However, Section 22 of the Securities Act provides that federal and state courts have concurrent jurisdiction over lawsuits brought the Securities Act or the rules and regulations thereunder. To the extent the exclusive forum provision restricts the courts in which claims arising under the Securities Act may be brought, there is uncertainty as to whether a court would enforce such a provision. We note that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. This provision does not apply to claims brought under the Exchange Act. See “Risk Factors—Our certificate of incorporation after this offering will designate courts in the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, and also provide that the federal district courts will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act, each of which could limit our stockholders’ ability to choose the judicial forum for disputes with us or our directors, officers, stockholders, or employees.”

Section 203 of the DGCL

We are subject to the provisions of Section 203 of the DGCL. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a “business combination” with an "interested stockholder" for a three-year period following the time that such stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. A “business combination” includes, among other things, a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested stockholder status, 15% or more of the corporation’s voting stock.

Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions: before the stockholder became interested, the board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances; or at or after the time the stockholder became interested, the business combination was approved by board of directors of the corporation and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.
A Delaware corporation may “opt out” of these provisions with an express provision in its original certificate of incorporation or an express provision in its certificate of incorporation or by-laws resulting from a stockholders’ amendment approved by at least a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

**Corporate Opportunities**

Our amended and restated certificate of incorporation provides that we renounce any interest or expectancy in the business opportunities of our Sponsors and Intel and each of their respective partners, principals, directors, officers, members, managers and/or employees, including any of the foregoing who serve as officers or directors of the Company, and each such party shall not have any obligation to offer us those opportunities unless presented to one of our directors or officers in his or her capacity as a director or officer.

**Limitations on Liability and Indemnification of Directors and Officers**

Our certificate of incorporation limits the liability of our directors and officers to the fullest extent permitted by Delaware law and requires that we will provide them with customary indemnification. We also expect to enter into customary indemnification agreements with each of our directors that provide them, in general, with customary indemnification in connection with their service to us or on our behalf. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, we have been informed that in the opinion of the SEC such indemnification is against public policy and is therefore unenforceable. We also maintain officers’ and directors’ liability insurance that insures against liabilities that our officers and directors may incur in such capacities.

**Transfer Agent and Registrar**

The transfer agent and registrar for our Class A common stock is American Stock Transfer & Trust Company, LLC.

**Listing**

We have applied to list our Class A common stock on the Exchange under the symbol “MCFE”.
SHARES ELIGIBLE FOR FUTURE SALE

Before this offering, there has been no public market for our Class A common stock. As described below, only a limited number of shares currently outstanding will be available for sale immediately after this offering due to contractual and legal restrictions on resale. Nevertheless, future sales of substantial amounts of our Class A common stock, including shares issued upon the exercise of outstanding options, in the public market after this offering, or the perception that those sales may occur, could cause the prevailing market price for our Class A common stock to fall or impair our ability to raise capital through sales of our equity securities.

Upon the completion of this offering, we will have outstanding [ ] shares of our Class A common stock, after giving effect to the issuance of shares of our Class A common stock in this offering, assuming no exercise by the underwriters of their option to purchase additional shares and no exercise of options outstanding as of [ ] and [ ] shares of our Class B common stock outstanding.

Of the shares that will be outstanding immediately after the completion of this offering, we expect that the [ ] shares of Class A common stock to be sold in this offering will be freely tradable without restriction under the Securities Act unless purchased by our “affiliates,” as that term is defined in Rule 144 under the Securities Act (“Rule 144”). Shares purchased by our affiliates may not be resold except pursuant to an effective registration statement or an exemption from registration, including the safe harbor under Rule 144 described below.

In addition, upon consummation of this offering, the Continuing Owners will beneficially own [ ] shares of Class A common stock underlying LLC Units. The Continuing Owners will have the right, from time to time, to exchange their LLC Units for cash (based upon the market price of the shares of our Class A common stock) or, at our option, for shares of our Class A common stock on a one-for-one basis (and McAfee Corp. will cancel an equal number of shares of Class B common stock to the exchanging member), subject to customary conversion rate adjustments for stock splits, stock dividends, reclassifications, and other similar transactions.

Shares of our Class A common stock received in exchange for a corresponding number of LLC Units and shares of Class B common stock held by the Continuing Owners would be “restricted securities,” as defined in Rule 144. As a result, absent registration under the Securities Act or compliance with Rule 144 thereunder or an exemption therefrom, these shares of Class A common stock will not be freely transferable to the public. However, we will enter into a registration rights agreement with the Continuing Owners that will require us to register under the Securities Act the resale of these shares of Class A common stock. See “Description of Capital Stock—Registration Rights” and “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Registration Rights Agreement.” Such securities registered under any registration statement will be available for sale in the open market unless restrictions apply.

The remaining [ ] shares of our Class A common stock outstanding after this offering will be “restricted securities,” as that term is defined in Rule 144, and we expect that substantially all of these restricted securities will be subject to the lock-up agreements and market standoff agreements described below. These restricted securities may be sold in the public market only if the sale is registered or pursuant to an exemption from registration, such as the safe harbor provided by Rule 144.

Lock-up Agreements and Market Standoff Agreements

We and each of our directors, executive officers, the selling stockholders, and holders of [ ]% of our capital stock, who collectively own [ ] shares of our Class A common stock, or securities exercisable for or exchangeable into shares of our Class A common stock, including LLC Units, following this offering, have agreed that, without the prior written consent of certain of the underwriters, we and they will not, subject to limited exceptions, directly or indirectly sell or dispose of any shares of Class A common stock or any securities
convertible into or exchangeable or exercisable for shares of Class A common stock for a period of 180 days after the date of this prospectus. Additionally, certain holders representing  % of our outstanding capital stock and options, have not entered into lock-up agreements with the underwriters and, therefore, are not subject to the restrictions described above. These holders are subject to market standoff agreements with us, and we will not waive any of the restrictions of such market standoff agreements during the period ending 180 days after the date of this prospectus without the prior written consent of Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC on behalf of the underwriters. The lock-up restrictions and specified exceptions are described in more detail under “Underwriters.”

Rule 144

In general, under Rule 144, beginning 90 days after the date of this prospectus, any person who is not our affiliate and has held their shares of Class A common stock for at least six months, including the holding period of any prior owner other than one of our affiliates, may sell shares without restriction, subject to the availability of current public information about us and upon the expiration of the market standoff agreements and lock-up agreements described above. In addition, under Rule 144, any person who is not our affiliate and has not been our affiliate at any time during the preceding three months and has held their shares of Class A common stock for at least one year, including the holding period of any prior owner other than one of our affiliates, would be entitled to sell an unlimited number of shares of Class A common stock immediately upon the completion of this offering without regard to whether current public information about us is available.

Beginning 90 days after the date of this prospectus, a person who is our affiliate or who was our affiliate at any time during the preceding three months and who has beneficially owned restricted securities for at least six months, including the holding period of any prior owner other than one of our affiliates, is entitled to sell a number of shares of Class A common stock within any three-month period that does not exceed the greater of: (i) 1% of the number of shares of our Class A common stock outstanding, which will equal approximately shares immediately after this offering; and (ii) the average weekly trading volume of our Class A common stock on the Exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 by our affiliates are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about us.

Rule 701

In general, under Rule 701 under the Securities Act (“Rule 701”), beginning 90 days after we become subject to the public company reporting requirements of the Exchange Act, any of our employees, directors, officers, consultants, or advisors who acquired shares of Class A common stock from us in connection with a written compensatory stock or option plan or other written agreement in compliance with Rule 701 is entitled to sell such shares in reliance on Rule 144 but without compliance with certain of the requirements contained in Rule 144. Accordingly, subject to any applicable lock-up agreements and market standoff agreements, beginning 90 days after we become subject to the public company reporting requirements of the Exchange Act, under Rule 701 persons who are not our affiliates may resell those shares without complying with the minimum holding period or public information requirements of Rule 144, and persons who are our affiliates may resell those shares without compliance with Rule 144’s minimum holding period requirements.

Equity Incentive Plans

Following this offering, we intend to file with the SEC a registration statement on Form S-8 under the Securities Act covering the shares of Class A common stock that are subject to options and other awards issuable pursuant to our equity incentive plans. Shares covered by such registration statement will be available for sale in the open market following its effective date, subject to certain Rule 144 limitations applicable to affiliates and the terms of lock-up agreements and market standoff agreements applicable to those shares.

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Subject to the lock-up agreements and market standoff agreements described above, certain holders of our Class A common stock, or securities exercisable for or exchangeable into shares of Class A common stock, including shares of Class B common stock and LLC Units, may demand that we register the sale of their shares under the Securities Act or, if we file another registration statement under the Securities Act other than a Form S-8 covering securities issuable under our equity plans or on Form S-4, may elect to include their shares of Class A common stock in such registration. Following such registered sales, the shares will be freely tradable without restriction under the Securities Act, unless held by our affiliates. See “Certain Relationships and Related Party Transactions—Agreements to be Entered in Connection with the Reorganization Transactions and this Offering—Registration Rights Agreement.”
MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a summary of certain United States federal income and estate tax consequences of the purchase, ownership and disposition of shares of our common stock as of the date hereof. Except where noted, this summary deals only with common stock that is held as a capital asset by a non-U.S. holder (as defined below).

A “non-U.S. holder” means a beneficial owner of shares of our common stock (other than an entity treated as a partnership for United States federal income tax purposes) that is not, for United States federal income tax purposes, any of the following:

- an individual citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

This summary is based upon provisions of the Code, the existing and proposed U.S. Treasury regulations promulgated thereunder, administrative pronouncements, and rulings and judicial decisions interpreting the foregoing, in each case as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in United States federal income and estate tax consequences different from those summarized below. This summary does not address all aspects of United States federal income and estate taxes and does not deal with the alternative minimum tax, the Medicare contribution tax, United States federal tax laws other than United States federal income or estate tax laws, or any foreign, state, local or other tax considerations that may be relevant to non-U.S. holders in light of their particular circumstances or status. In addition, it does not represent a detailed description of the United States federal income and estate tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws (including if you are a United States expatriate, foreign pension fund, “controlled foreign corporation,” “passive foreign investment company,” financial institution, broker-dealer, insurance company, tax-exempt entity, a corporation that accumulates earnings to avoid United States federal income tax, a person subject to special tax accounting as a result of any item of gross income taken into account in an applicable financial statement under Section 451(b) of the Code, a person in a special situation such as those who have elected to mark securities to market or those who hold shares of common stock as part of a straddle, hedge, conversion transaction, or synthetic security or a partnership or other pass-through entity (or beneficial owner thereof) for United States federal income tax purposes). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

A modified definition of “non-U.S. holder” applies for U.S. federal estate tax purposes (as discussed below).

If a partnership (or other entity treated as a partnership for United States federal income tax purposes) holds shares of our common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our common stock, you should consult your tax advisors.

If you are considering the purchase of our common stock, you should consult your own tax advisors concerning the particular United States federal income and estate tax consequences to you of the purchase.
ownership and disposition of our common stock, as well as the consequences to you arising under other United States federal tax laws and the laws of any other taxing jurisdiction, and the application of any tax treaties.

**Distributions on Common Stock**

In the event that we make a distribution of cash or other property (other than certain pro rata distributions of our stock) in respect of shares of our common stock, the distribution generally will be treated as a dividend for United States federal income tax purposes to the extent it is paid from our current or accumulated earnings and profits, as determined under United States federal income tax principles. Any portion of a distribution that exceeds our current and accumulated earnings and profits generally will be treated first as a tax-free return of capital, causing a reduction in the adjusted tax basis of a non-U.S. holder’s shares of our common stock, and to the extent the amount of the distribution exceeds a non-U.S. holder’s adjusted tax basis in shares of our common stock, the excess will be treated as gain from the disposition of shares of our common stock (the tax treatment of which is discussed below under “—Gain on Disposition of Common Stock”).

Subject to the discussion below regarding effectively connected income, dividends paid to a non-U.S. holder generally will be subject to withholding of United States federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, as discussed further below. Even if our current or accumulated earnings and profits are less than the amount of the distribution, the applicable withholding agent may elect to treat the entire distribution as a dividend for U.S. federal withholding tax purposes. Dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, if required by an applicable income tax treaty, are attributable to a United States permanent establishment, or, in certain cases involving individual holders, a fixed base) are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to United States federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person as defined under the Code. To obtain this exemption, a non-U.S. holder must provide us with a valid IRS Form W-8ECI properly certifying such exemption. Any such effectively connected dividends received by a foreign corporation may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to provide the applicable withholding agent with a properly executed, valid IRS Form W-8BEN or Form W-8BEN-E (or other applicable form) certifying under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits or (b) if our common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable United States Treasury regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals. You are urged to consult your own tax advisors regarding your entitlement to benefits under a relevant income tax treaty.

A non-U.S. holder eligible for a reduced rate of United States federal withholding tax pursuant to an income tax treaty may be entitled to a refund of any excess amounts withheld if the non-U.S. holder timely files an appropriate claim for refund with the IRS.

The foregoing discussion is subject to the discussion below under “—Information Reporting and Backup Withholding” and “—Additional Withholding Requirements.”

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Gain on Disposition of Common Stock

Subject to the discussion of backup withholding and FATCA below, any gain realized by a non-U.S. holder on the sale or other disposition of shares of our common stock generally will not be subject to United States federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment of the non-U.S. holder or, in certain cases involving individual holders, a fixed base of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a “United States real property holding corporation” for United States federal income tax purposes during the applicable period specified in the Code, and certain other conditions are met.

A non-U.S. holder described in the first bullet point immediately above will be subject to tax on the gain derived from the sale or other disposition in the same manner as if the non-U.S. holder were a United States person as defined under the Code. In addition, if any non-U.S. holder described in the first bullet point immediately above is a foreign corporation, the gain realized by such non-U.S. holder may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a 30% (or such lower rate as may be specified by an applicable income tax treaty) tax on the gain derived from the sale or other disposition, which gain may be offset by United States source capital losses even though the individual is not considered a resident of the United States.

Generally, a corporation is a “United States real property holding corporation” if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (all as determined for United States federal income tax purposes). We believe we are not and do not anticipate becoming a “United States real property holding corporation” for United States federal income tax purposes.

Federal Estate Tax

Common stock owned or treated as owned by an individual who is not a U.S. citizen or resident (as specifically determined for United States federal estate tax purposes) at the time of the individual’s death will be included in the individual’s gross estate for United States federal estate tax purposes, unless an applicable estate tax treaty provides otherwise.

Information Reporting and Backup Withholding

Distributions paid to a non-U.S. holder and the amount of any tax withheld with respect to such distributions generally will be reported to the IRS. Copies of the information returns reporting such distributions and any withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty or agreement for the exchange of information.

A non-U.S. holder will not be subject to backup withholding on dividends received if such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a United States person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale or other disposition of shares of our common stock made within the United States or conducted through
certain United States-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a United States person as defined under the Code), or such owner otherwise establishes an exemption.

Provision of an IRS Form W-8 appropriate to the non-U.S. holder’s circumstances will generally satisfy the certification requirements necessary to avoid the additional information reporting and backup withholding.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder’s United States federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Requirements

Under Sections 1471 through 1474 of the Code (such Sections commonly referred to as “FATCA”), a 30% United States federal withholding tax may apply to any dividends paid on and (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of shares of our common stock paid to (i) a “foreign financial institution” (as specifically defined in the Code) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA or (y) its compliance (or deemed compliance) with FATCA (which may alternatively be in the form of compliance with an intergovernmental agreement with the United States) in a manner which avoids withholding, or (ii) a “non-financial foreign entity” (as specifically defined in the Code) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA or (y) adequate information regarding certain substantial United States beneficial owners of such entity (if any). An intergovernmental agreement between the United States and the entity’s jurisdiction may modify these requirements. If a dividend payment is both subject to withholding under FATCA and subject to the withholding tax discussed above under “—Distributions on Common Stock,” the withholding under FATCA may be credited against, and therefore reduce, such other withholding tax upon filing a United States federal income tax return containing the required information (which may entail significant administrative burden). You should consult your own tax advisors regarding these requirements and whether they may be relevant to your ownership and disposition of shares of our common stock.
UNDERWRITERS (CONFLICTS OF INTEREST)

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC are acting as representatives, have severally agreed to purchase, and we and the selling stockholders have agreed to sell to them, severally, the number of shares indicated below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Shares</th>
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<tr>
<td>Morgan Stanley &amp; Co. LLC</td>
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<tr>
<td>Goldman Sachs &amp; Co. LLC</td>
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<tr>
<td>TPG Capital BD, LLC</td>
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<tr>
<td>BofA Securities, Inc.</td>
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<tr>
<td>Citigroup Global Markets Inc.</td>
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<tr>
<td>RBC Capital Markets, LLC</td>
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<td>Deutsche Bank Securities Inc.</td>
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<td>UBS Securities LLC</td>
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<tr>
<td>HSBC Securities (USA) Inc.</td>
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<td>Mizuho Securities USA LLC</td>
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<td>Evercore Group L.L.C.</td>
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<td>Piper Sandler &amp; Co.</td>
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<td>Stifel, Nicolaus &amp; Company, Incorporated</td>
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</tbody>
</table>

Total:

The underwriters and the representatives are collectively referred to as the “underwriters” and the “representatives,” respectively. The underwriters are offering the shares of Class A common stock subject to their acceptance of the shares from us and the selling stockholders and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of Class A common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters’ option to purchase additional shares described below.

The underwriters initially propose to offer part of the shares of Class A common stock directly to the public at the offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ per share under the public offering price. After the initial offering of the shares of Class A common stock, the offering price and other selling terms may from time to time be varied by the representative. Sale of Class A common stock made outside of the United States may be made by affiliates of the underwriters.

We and the selling stockholders have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of Class A common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of Class A common stock as the number listed next to the underwriter’s name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters’ option to purchase up to an additional shares of Class A common stock.
The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $\text{[amount]}$. We have agreed to reimburse the underwriters for expense relating to clearance of this offering with the Financial Industry Regulatory Authority up to $\text{[amount]}$.

The underwriters have informed us and the selling stockholders that they do not intend sales to discretionary accounts to exceed 5% of the total number of shares of common stock offered by them.

We have applied to have our Class A common stock approved for listing on the Exchange under the trading symbol “MCFE”.

We, Foundation Technology Worldwide LLC, the selling stockholders, and all directors and officers and holders of substantially all of our outstanding capital stock and securities convertible into our capital stock have agreed that, without the prior written consent of Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus (the “restricted period”):

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or units of Foundation Technology Worldwide LLC beneficially owned by the locked-up party or any securities convertible into or exercisable or exchangeable for shares of common stock or units of Foundation Technology Worldwide LLC;
- file any registration statement with the SEC relating to the offering of any shares of Class A common stock or any securities convertible into or exercisable or exchangeable for Class A common stock; or
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock or units of Foundation Technology Worldwide LLC.

whether any such transaction described above is to be settled by delivery of common stock, units of Foundation Technology Worldwide LLC, or such other securities, in cash or otherwise. In addition, we and each such person agrees that, without the prior written consent of Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC on behalf of the underwriters, we or such other person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any shares of Class A common stock or any security convertible into or exercisable or exchangeable for Class A common stock.

The restrictions described in the immediately preceding paragraph to do not apply to:

- the sale of shares to the underwriters; or
- the issuance by the Company of shares of Class A common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing; or
- transactions by any person other than us relating to shares of Class A common stock or other securities acquired in open market transactions after the completion of the offering of the shares; provided that no filing under Section 16(a) of the Exchange Act, is required or voluntarily made in connection with subsequent sales of the Class A common stock or other securities acquired in such open market transactions.
Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC, in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. Certain holders representing % of our outstanding capital stock and options, have not entered into lock-up agreements with us, and we will not waive any of the restrictions of such market standoff agreements during the period ending 180 days after the date of this prospectus without the prior written consent of Morgan Stanley & Co. LLC and Goldman Sachs & Co. LLC on behalf of the underwriters.

In order to facilitate the offering of the Class A common stock, the underwriters may engage in transactions that stabilize, maintain, or otherwise affect the price of the Class A common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the option. The underwriters can close out a covered short sale by exercising the option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the option. The underwriters may also sell shares in excess of the option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the Class A common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of Class A common stock in the open market to stabilize the price of the Class A common stock. These activities may raise or maintain the market price of the Class A common stock above independent market levels or prevent or retard a decline in the market price of the Class A common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We, the selling stockholders, and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. The representatives may agree to allocate a number of shares of Class A common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters that may make Internet distributions on the same basis as other allocations.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing, and brokerage activities. Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us, for which they received or will receive customary fees and expenses. Certain of the underwriters or their respective affiliates are lenders under our credit facilities, and an affiliate of Morgan Stanley & Co. LLC acts as administrative agent and collateral agent under our first lien credit facilities.

In addition, in the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.
Conflicts of Interest

Affiliates of TPG beneficially own in excess of 10% of our issued and outstanding common stock. Because TPG Capital BD, LLC, an affiliate of TPG, is an underwriter in this offering and its affiliates own in excess of 10% of our issued and outstanding common stock, TPG Capital BD, LLC is deemed to have a “conflict of interest” under Rule 5121. Accordingly, this offering is being made in compliance with the requirements of Rule 5121. Pursuant to that rule, the appointment of a “qualified independent underwriter” is not required in connection with this offering as the member primarily responsible for managing the public offering does not have a conflict of interest, is not an affiliate of any member that has a conflict of interest and meets the requirements of paragraph (f)(12)(E) of Rule 5121. TPG Capital BD, LLC will not confirm sales of the securities to any account over which it exercises discretionary authority without the specific written approval of the account holder.

Pricing of the Offering

Prior to this offering, there has been no public market for our Class A common stock. The initial public offering price was determined by negotiations between us, the selling stockholders, and the representatives. Among the factors considered in determining the initial public offering price were our future prospects and those of our industry in general, our sales, earnings, and certain other financial and operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Selling Restrictions

European Economic Area and United Kingdom

In relation to each Member State of the European Economic Area and the United Kingdom (each a “Relevant State”), no shares of our Class A common stock have been offered or will be offered pursuant to this offering to the public in that Relevant State prior to the publication of a prospectus in relation to shares of our Class A common stock which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that offers of shares of our Class A common stock may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

• to any legal entity which is a qualified investor as defined in the Prospectus Regulation;
• to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining the prior consent of the representative for any such offer; or
• in any other circumstances falling within Article 1(4) of the Prospectus Regulation;

provided that no such offer of shares of our Class A common stock shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares of our Class A common stock in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of our Class A common stock to be offered so as to enable an investor to decide to purchase or subscribe for any shares of our Class A common stock, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

This European Economic Area selling restriction is in addition to any other selling restrictions set out below.
Each underwriter has represented and agreed that:

(a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 ("FSMA")) received by it in connection with the issue or sale of the shares of Class A common stock in circumstances in which Section 21(1) of the FSMA does not apply to the company or the selling stockholders; and

(b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares of Class A common stock in, from or otherwise involving the United Kingdom.

In the United Kingdom, this prospectus is only addressed to and directed at qualified investors who are (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order); or (ii) high net worth entities and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). Any investment or investment activity to which this prospectus relates is available only to relevant persons and will only be engaged with relevant persons. Any person who is not a relevant person should not act or rely on this prospectus or any of its contents.

Canada

The shares of our Class A common stock may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions, and Ongoing Registrant Obligations. Any resale of the Class A common stock must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Hong Kong

The shares of our Class A common stock may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) ("Companies (Winding Up and Miscellaneous Provisions) Ordinance") or which do not constitute an invitation to the public within the meaning of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) ("Securities and Futures Ordinance"), (ii) to "professional investors" as defined in the Securities and Futures Ordinance and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, and no advertisement, invitation or document relating to the Class A common stock may be issued or may be in the
possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares of Class A common stock which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” in Hong Kong as defined in the Securities and Futures Ordinance and any rules made thereunder.

**Singapore**

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Class A common stock may not be circulated or distributed, nor may the Class A common stock be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor (as defined under Section 4A of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”)) under Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to conditions set forth in the SFA.

Where the shares of Class A common stock are subscribed or purchased under Section 275 of the SFA by a relevant person which is a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor, the securities (as defined in Section 239(1) of the SFA) of that corporation shall not be transferable for 6 months after that corporation has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer in that corporation’s securities pursuant to Section 275(1A) of the SFA, (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore (“Regulation 32”).

Where the shares of Class A common stock are subscribed or purchased under Section 275 of the SFA by a relevant person which is a trust (where the trustee is not an accredited investor (as defined in Section 4A of the SFA)) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited investor, the beneficiaries’ rights and interest (howsoever described) in that trust shall not be transferable for 6 months after that trust has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction (whether such amount is to be paid for in cash or by exchange of securities or other assets), (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32.

Solely for the purposes of our obligations pursuant to Section 309B of the SFA, we have determined, and hereby notify all relevant persons (as defined in the Securities and Futures (Capital Markets Products) Regulations 2018 (“CMP Regulations”)) that the shares of Class common stock are “prescribed capital markets products” (as defined in the CMP Regulations) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).
Japan

The shares of Class A common stock have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended), or the FIEA. The shares of Class A common stock may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws and regulations of Japan.

Australia

This prospectus:

• does not constitute a disclosure document or a prospectus under Chapter 6D.2 of the Corporations Act 2001 (Cth) (the “Corporations Act”);
• has not been, and will not be, lodged with the Australian Securities and Investments Commission (“ASIC”), as a disclosure document for the purposes of the Corporations Act and does not purport to include the information required of a disclosure document for the purposes of the Corporations Act; and
• may only be provided in Australia to select investors who are able to demonstrate that they fall within one or more of the categories of investors, available under section 708 of the Corporations Act (“Exempt Investors”).

The Class A common stock may not be directly or indirectly offered for subscription or purchased or sold, and no invitations to subscribe for or buy the Class A common stock may be issued, and no draft or definitive offering memorandum, advertisement or other offering material relating to any Class A common stock may be distributed in Australia, except where disclosure to investors is not required under Chapter 6D of the Corporations Act or is otherwise in compliance with all applicable Australian laws and regulations. By submitting an application for the Class A common stock, you represent and warrant to us that you are an Exempt Investor.

As any offer of Class A common stock under this document will be made without disclosure in Australia under Chapter 6D.2 of the Corporations Act, the offer of those securities for resale in Australia within 12 months may, under section 707 of the Corporations Act, require disclosure to investors under Chapter 6D.2 if none of the exemptions in section 708 applies to that resale. By applying for the Class A common stock you undertake to us that you will not, for a period of 12 months from the date of sale of the Class A common stock, offer, transfer, assign or otherwise alienate those Class A common stock to investors in Australia except in circumstances where disclosure to investors is not required under Chapter 6D.2 of the Corporations Act or where a compliant disclosure document is prepared and lodged with ASIC.

Brazil

The offer and sale of our Class A common stock has not been, and will not be, registered (or exempted from registration) with the Brazilian Securities Commission (Comissão de Valores Mobiliários – CVM) and, therefore, will not be carried out by any means that would constitute a public offering in Brazil under Law No. 6,385, of December 7, 1976, as amended, under CVM Rule No. 400, of December 29, 2003, as amended, or under CVM Rule No. 476, of January 16, 2009, as amended. Any representation to the contrary is untruthful and unlawful. As a consequence, our Class A common stock cannot be offered and sold in Brazil or to any investor resident or domiciled in Brazil. Documents relating to the offering of our Class A common stock, as well as information contained therein, may not be supplied to the public in Brazil, nor used in connection with any public offer for subscription or sale of Class A common stock to the public in Brazil.

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China

This prospectus will not be circulated or distributed in the People’s Republic of China (“PRC”) and the Class A common stock will not be offered or sold and will not be offered or sold to any person for re-offering or resale directly or indirectly to any residents of the PRC except pursuant to any applicable laws and regulations of the PRC. Neither this prospectus nor any advertisement or other offering material may be distributed or published in the PRC, except under circumstances that will result in compliance with applicable laws and regulations.

France

Neither this prospectus nor any other offering material relating to the Class A common stock offered by this prospectus has been and will not be submitted to the clearance procedures of the Autorité des Marchés Financiers or of the competent authority of another member state of the European Economic Area and notified to the Autorité des Marchés Financiers. The Class A common stock has not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus nor any other offering material relating to the Class A common stock has been or will be:

a) released, issued, distributed or caused to be released, issued or distributed to the public in France;
b) used in connection with any offer for subscription or sale of the notes to the public in France.

Such offers, sales and distributions will be made in France only:
c) to qualified investors (investisseurs qualifiés) and/or to a restricted circle of investors (cercle restreint d’investisseurs), in each case acting for their own account, or otherwise in circumstances in which no offer to the public occurs, all as defined in and in accordance with Articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French Code monétaire et financier;
d) to investment services providers authorized to engage in portfolio management on behalf of third parties; or
e) in a transaction that, in accordance with Article L.411-2-1°-or-2° -or 3° of the French Code monétaire et financier and Article 211-2 of the General Regulations (Règlement Général) of the Autorité des Marchés Financiers, does not constitute a public offer (offre au public).

The Class A common stock may not be distributed directly or indirectly to the public except in accordance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French Code monétaire et financier and applicable regulations thereunder.

Kuwait

The shares of our Class A common stock has not been authorized or licensed for offering, marketing or sale in the State of Kuwait. The distribution of this prospectus and the offering and sale of the Class A common stock in the State of Kuwait is restricted by law unless a license is obtained from the Kuwait Ministry of Commerce and Industry in accordance with Law 31 of 1990. Persons into whose possession this prospectus comes are required by us and the international underwriters to inform themselves about and to observe such restrictions. Investors in the State of Kuwait who approach us or any of the international underwriters to obtain copies of this prospectus are required by us and the international underwriters to keep such prospectus confidential and not to make copies thereof or distribute the same to any other person and are also required to observe the restrictions provided for in all jurisdictions with respect to offering, marketing and the sale of the Class A common stock.

Qatar

The shares of our Class A common stock described in this prospectus have not been, and will not be, offered, sold or delivered, at any time, directly or indirectly in the State of Qatar in a manner that would
constitute a public offering. This prospectus has not been, and will not be, registered with or approved by the Qatar Financial Markets Authority or Qatar Central Bank and may not be publicly distributed. This prospectus is intended for the original recipient only and must not be provided to any other person. It is not for general circulation in the State of Qatar and may not be reproduced or used for any other purpose.

**Saudi Arabia**

This document may not be distributed in the Kingdom of Saudi Arabia except to such persons as are permitted under the Offers of Securities Regulations as issued by the board of the Saudi Arabian Capital Market Authority ("CMA") pursuant to resolution number 2-11-2004 dated 4 October 2004 as amended by resolution number 1-28-2008, as amended (the “CMA Regulations”). The CMA does not make any representation as to the accuracy or completeness of this document and expressly disclaims any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of this document. Prospective purchasers of the securities offered hereby should conduct their own due diligence on the accuracy of the information relating to the securities. If you do not understand the contents of this document, you should consult an authorized financial adviser.

**Switzerland**

This prospectus is not intended to constitute an offer or solicitation to purchase or invest in the Class A common stock. The Class A common stock may not be publicly offered, directly or indirectly, in Switzerland within the meaning of the Swiss Financial Services Act ("FinSA") and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading venue (exchange or multilateral trading facility) in Switzerland. This document does not constitute a prospectus within the meaning of, and has been prepared without regard to, the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading venue (exchange or multilateral trading facility) in Switzerland. Neither this document nor any other offering or marketing material relating to the Class A common stock constitutes a prospectus pursuant to the FinSA, and neither this document nor any other offering or marketing material relating to the Class A common stock or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, or the Class A common stock have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of Class A common stock will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of Class A common stock has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of Class A common stock.

**United Arab Emirates**

The shares of our Class A common stock have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, this prospectus does not constitute a public offer of securities in the United Arab Emirates (including the Dubai International Financial Centre) and is not intended to be a public offer. This prospectus has not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

**Chile**

The shares of our Class A common stock are not registered in the Securities Registry (Registro de Valores) or subject to the control of the Chilean Securities and Exchange Commission (Superintendencia de Valores y
Seguros de Chile). This prospectus supplement and other offering materials relating to the offer of the shares do not constitute a public offer of, or an invitation to subscribe for or purchase, the shares in the Republic of Chile, other than to individually identified purchasers pursuant to a private offering within the meaning of Article 4 of the Chilean Securities Market Act (Ley de Mercado de Valores) (an offer that is not “addressed to the public at large or to a certain sector or specific group of the public”).

**Bermuda**

The shares of our Class A common stock may be offered or sold in Bermuda only in compliance with the provisions of the Investment Business Act of 2003 of Bermuda which regulates the sale of securities in Bermuda. Additionally, non-Bermudian persons (including companies) may not carry on or engage in any trade or business in Bermuda unless such persons are permitted to do so under applicable Bermuda legislation.

**British Virgin Islands**

The shares of our Class A common stock are not being and may not be offered to the public or to any person in the British Virgin Islands for purchase or subscription by or on our behalf. The Class A common stock may be offered to companies incorporated under the BVI Business Companies Act, 2004 (British Virgin Islands) (each a “BVI Company”), but only where the offer will be made to, and received by, the relevant BVI Company entirely outside of the British Virgin Islands.

This prospectus has not been, and will not be, registered with the Financial Services Commission of the British Virgin Islands. No registered prospectus has been or will be prepared in respect of the Class A common stock for the purposes of the Securities and Investment Business Act, 2010 or the Public Issuers Code of the British Virgin Islands.

**Korea**

The shares of our Class A common stock have not been and will not be registered under the Financial Investments Services and Capital Markets Act of Korea and the decrees and regulations thereunder (the “FSCMA”), and the shares have been and will be offered in Korea as a private placement under the FSCMA. None of the Class A common stock may be offered, sold or delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea except pursuant to the applicable laws and regulations of Korea, including the FSCMA and the Foreign Exchange Transaction Law of Korea and the decrees and regulations thereunder (the “FETL”). Furthermore, the purchaser of the shares shall comply with all applicable regulatory requirements (including but not limited to requirements under the FETL) in connection with the purchase of the shares. By the purchase of the shares, the relevant holder thereof will be deemed to represent and warrant that if it is in Korea or is a resident of Korea, it purchased the shares pursuant to the applicable laws and regulations of Korea.

**Malaysia**

No prospectus or other offering material or document in connection with the offer and sale of the shares of our Class A common stock has been or will be registered with the Securities Commission of Malaysia (“Commission”) for the Commission’s approval pursuant to the Capital Markets and Services Act 2007. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares of our Class A common stock may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Malaysia other than (i) a closed end fund approved by the Commission; (ii) a holder of a Capital Markets Services License; (iii) a person who acquires the shares, as principal, if the offer is on terms that the shares may only be acquired at a consideration of not less than RM250,000 (or its equivalent in foreign currencies) for each transaction; (iv) an individual whose total net
personal assets or total net joint assets with his or her spouse exceeds RM3 million (or its equivalent in foreign currencies), excluding the value of the primary residence of the individual; (v) an individual who has a gross annual income exceeding RM300,000 (or its equivalent in foreign currencies) per annum in the preceding 12 months; (vi) an individual who, jointly with his or her spouse, has a gross annual income of RM400,000 (or its equivalent in foreign currencies), per annum in the preceding 12 months; (vii) a corporation with total net assets exceeding RM10 million (or its equivalent in a foreign currencies) based on the last audited accounts; (viii) a partnership with total net assets exceeding RM10 million (or its equivalent in foreign currencies); (ix) a bank licensee or insurance licensee as defined in the Labuan Financial Services and Securities Act 2010; (x) an Islamic bank licensee or takaful licensee as defined in the Labuan Financial Services and Securities Act 2010; and (xi) any other person as may be specified by the Commission; provided that, in the each of the preceding categories (i) to (xi), the distribution of the shares is made by a holder of a Capital Markets Services License who carries on the business of dealing in securities. The distribution in Malaysia of this prospectus is subject to Malaysian laws. This prospectus does not constitute and may not be used for the purpose of public offering or an issue, offer for subscription or purchase, invitation to subscribe for or purchase any securities requiring the registration of a prospectus with the Commission under the Capital Markets and Services Act 2007.

Taiwan

The shares of our Class A common stock have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitute an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the shares our Class A common stock in Taiwan.

South Africa

Due to restrictions under the securities laws of South Africa, the shares of our Class A common stock are not offered, and the offer shall not be transferred, sold, renounced or delivered, in South Africa or to a person with an address in South Africa, unless one or other of the following exemptions applies:

(a) the offer, transfer, sale, renunciation or delivery is to:

(i) persons whose ordinary business is to deal in securities, as principal or agent;

(ii) the South African Public Investment Corporation;

(iii) persons or entities regulated by the Reserve Bank of South Africa;

(iv) authorized financial service providers under South African law;

(v) financial institutions recognized as such under South African law;

(vi) a wholly-owned subsidiary of any person or entity contemplated in (iii), (iv) or (v), acting as agent in the capacity of an authorized portfolio manager for a pension fund or collective investment scheme (in each case duly registered as such under South African law); or

(vii) any combination of the person in (i) to (vi); or

(b) the total contemplated acquisition cost of the securities, for any single addressee acting as principal is equal to or greater than ZAR1,000,000.

No “offer to the public” (as such term is defined in the South African Companies Act, No. 71 of 2008 (as amended or re-enacted) (the “South African Companies Act”)) in South Africa is being made in connection with the issue of the Class A common stock. Accordingly, this document does not, nor is it intended to, constitute a
“registered prospectus” (as that term is defined in the South African Companies Act) prepared and registered under the South African Companies Act and has not been approved by, and/or filed with, the South African Companies and Intellectual Property Commission or any other regulatory authority in South Africa. Any issue or offering of the Class A common stock in South Africa constitutes an offer of the Class A common stock in South Africa for subscription or sale in South Africa only to persons who fall within the exemption from “offers to the public” set out in Section 96(1)(a) of the South African Companies Act. Accordingly, this document must not be acted on or relied on by persons in South Africa who do not fall within Section 96(1)(a) of the South African Companies Act (such persons being referred to as “SA Relevant Persons”). Any investment or investment activity to which this document relates is available in South Africa only to SA Relevant Persons and will be engaged in South Africa only with SA Relevant Persons.
LEGAL MATTERS

The validity of the issuance of our Class A common stock offered in this prospectus will be passed upon for us by Ropes & Gray LLP, San Francisco, California. Certain legal matters in connection with this offering will be passed upon for the underwriters by Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California. Ropes & Gray LLP and some of its attorneys are limited partners of RGIP, LP, which is an investor in certain investment funds advised by certain of our Sponsors and often a co-investor with such funds. RGIP, LP owns, directly or indirectly, less than 1% of our outstanding Class A common stock and Class B common stock in the aggregate.

EXPERTS

The audited consolidated financial statements of McAfee (Predecessor) as of and for the period ended April 3, 2017 included in this prospectus have been so included in reliance on the report of Ernst & Young LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements as of December 28, 2019 and December 29, 2018, for the years ended December 28, 2019 and December 29, 2018, and for the period from April 4, 2017 through December 30, 2017 included in this Prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

In connection with this offering, PricewaterhouseCoopers LLP (“PwC”) completed an independence assessment to evaluate the services and relationships with Foundation Technology Worldwide LLC (also known as and hereinafter referred to as “McAfee” or the “Company”) and its affiliates that may bear on PwC’s independence under the SEC and the PCAOB (United States) independence rules for an audit period commencing April 4, 2017. The existence of business relationships, including the performance of a management function, at controlled portfolio companies, and their controlled subsidiaries, of our indirect parent, TPG, were identified that are inconsistent with SEC and PCAOB auditor independence rules provided in Rule 2-01 of Regulation S-X and are described below. Additionally, the performance of employee activities, deemed to be management functions, and a contingent fee arrangement benefiting an upstream affiliate of the Company, were identified that are inconsistent with SEC and PCAOB auditor independence rules provided in 2-01 of Regulation S-X and are described below.

- From May 2017 through December 2017, a business relationship between PwC US and a sister entity under common control with McAfee existed, which allowed for the joint pursuit of business opportunities.
- From June 2017 through January 2018, a business relationship between PwC China and a controlled subsidiary, located in China, of a sister entity under common control with McAfee existed, which allowed for the joint pursuit of business opportunities.
- From May 2017 through September 2017, a business relationship between PwC Japan and a controlled subsidiary, located in Japan, of a sister entity under common control with McAfee existed, which allowed for the joint pursuit of business opportunities. In September 2017, the business relationship expired under its own terms with no business opportunities having been jointly pursued or awarded pursuant to this business relationship.
- From June 2018 through February 2019, a software reselling arrangement, deemed an impermissible business relationship, including the performance of a management function, between PwC India and a controlled subsidiary, located in India, of a sister entity under common control with McAfee existed.
From April 2017 through July 2019, PwC US provided services pursuant to a contingent fee benefitting an upstream affiliate of the Company. In July 2019, PwC US agreed to waive the fee and terminate the remaining services.

From April 2017 through December 2018 and from July 2018 through June 2019, PwC US provided non-audit services which included certain employee activities benefitting an upstream affiliate of the Company.

PwC communicated the facts and circumstances surrounding the services and relationships, including the scope and duration of the services and business relationships, including the fees earned and the steps taken to terminate the prohibited aspect of the services and relationships to the Audit Committee of McAfee. PwC also noted that none of the matters noted have any accounting impact on the financial results of McAfee or any of its subsidiaries and, therefore, presents no self review threat. The filing of the Form S-1 necessitates compliance with the SEC’s and PCAOB’s independence rules. The Audit Committee and management of the Company and PwC have separately considered the impact that the business relationships and non-audit services may have had on PwC’s independence with respect to McAfee. Based on the totality of the information provided with respect to the impact of the contingent fee, performance of management functions and the business relationships, both PwC and the Audit Committee of McAfee individually concluded that PwC is capable of exercising objective and impartial judgment in connection with the audits of the Company’s consolidated financial statements as of December 28, 2019 and December 29, 2018, for the years ended December 28, 2019 and December 29, 2018, and for the period from April 4, 2017 through December 30, 2017.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of Class A common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits filed therewith. For further information with respect to us and the Class A common stock offered hereby, please refer to the registration statement and the exhibits filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding registrants that file electronically with the SEC. The SEC’s website address is www.sec.gov.

Upon completion of this offering, we will become subject to the information and periodic reporting requirements of the Exchange Act and, in accordance therewith, we will file periodic reports, proxy statements and other information with the SEC. Such periodic reports, proxy statements and other information will be available for inspection at the website of the SEC referred to above.

We also maintain a website at www.mcafee.com. Upon completion of this offering, you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on, or that can be accessed through, our website does not constitute a part of this prospectus or the registration statement of which this prospectus forms a part, and is not incorporated by reference herein. We have included our website address in this prospectus solely for informational purposes and you should not consider any information contained on, or that can be accessed through, our website as part of this prospectus or in deciding whether to purchase shares of our common stock.
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**FOUNDATION TECHNOLOGY WORLDWIDE LLC**  
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<tr>
<td>Unaudited Condensed Consolidated Statements of Cash Flows for the three and six months ended June 29, 2019 and June 27, 2020</td>
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<tr>
<td>Notes to the Unaudited Condensed Consolidated Financial Statements</td>
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</tr>
</tbody>
</table>
Report of Independent Registered Public Accounting Firm

The Board of Directors and Management of Intel Corporation

We have audited the accompanying combined statements of operations and comprehensive loss, cash flows and equity of McAfee (Predecessor) for the period from January 1, 2017 to April 3, 2017 (referred to as “period ended April 3, 2017”). These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company’s internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the combined financial position of McAfee (Predecessor) at April 3, 2017, and the combined results of its operations and its cash flows for the period ended April 3, 2017, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

San Jose, California
July 14, 2017

F-1
Report of Independent Registered Public Accounting Firm

To the Board of Managers of Foundation Technology Worldwide LLC

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Foundation Technology Worldwide LLC and its subsidiaries (also known as and herein after referred to as “McAfee” or the “Company”) as of December 28, 2019 and December 29, 2018, and the related consolidated statements of operations and comprehensive loss, of equity (deficit), and of cash flows for the years ended December 28, 2019, December 29, 2018 and for the period from April 4, 2017 to December 30, 2017, including the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 28, 2019 and December 29, 2018, and the results of its operations and its cash flows for the years ended December 28, 2019, December 29, 2018, and for the period from April 4, 2017 to December 30, 2017 in conformity with accounting principles generally accepted in the United States of America.

Changes in Accounting Principles

As discussed in Note 3 and in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in the year ended December 28, 2019 and the manner in which it accounts for revenues from contracts with customers in the year ended December 29, 2018.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
San Jose, California

March 5, 2020, except for the effects of disclosing earnings per unit information discussed in Note 18 to the consolidated financial statements, as to which the date is August 17, 2020

We have served as the Company’s auditor since 2017.
## CONSOLIDATED BALANCE SHEETS

(\textit{in millions})

<table>
<thead>
<tr>
<th></th>
<th>Successor As of December 29, 2018</th>
<th>Successor As of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$468</td>
<td>$167</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>347</td>
<td>409</td>
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<tr>
<td>Deferred costs</td>
<td>165</td>
<td>187</td>
</tr>
<tr>
<td>Other current assets</td>
<td>75</td>
<td>68</td>
</tr>
<tr>
<td>Total current assets</td>
<td>1,055</td>
<td>831</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>178</td>
<td>171</td>
</tr>
<tr>
<td>Goodwill</td>
<td>2,426</td>
<td>2,428</td>
</tr>
<tr>
<td>Identified intangible assets, net</td>
<td>2,539</td>
<td>2,071</td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>54</td>
<td>55</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>117</td>
<td>232</td>
</tr>
<tr>
<td>Total assets</td>
<td>$6,369</td>
<td>$5,788</td>
</tr>
<tr>
<td><strong>Liabilities and deficit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and other current liabilities</td>
<td>$142</td>
<td>$196</td>
</tr>
<tr>
<td>Long-term debt, current portion</td>
<td>36</td>
<td>43</td>
</tr>
<tr>
<td>Accrued marketing</td>
<td>104</td>
<td>94</td>
</tr>
<tr>
<td>Income taxes payable</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Accrued compensation and benefits</td>
<td>187</td>
<td>209</td>
</tr>
<tr>
<td>Lease liabilities, current portion</td>
<td>—</td>
<td>29</td>
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<tr>
<td>Deferred revenue</td>
<td>1,455</td>
<td>1,574</td>
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<tr>
<td>Total current liabilities</td>
<td>1,937</td>
<td>2,160</td>
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<tr>
<td>Long-term debt, net</td>
<td>4,072</td>
<td>4,669</td>
</tr>
<tr>
<td>Deferred tax liabilities</td>
<td>140</td>
<td>160</td>
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<tr>
<td>Other long-term liabilities</td>
<td>39</td>
<td>175</td>
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<tr>
<td>Deferred revenue, less current portion</td>
<td>652</td>
<td>718</td>
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<tr>
<td>Commitments and contingencies (Note 17)</td>
<td>—</td>
<td>—</td>
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<tr>
<td><strong>Deficit:</strong></td>
<td></td>
<td></td>
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<tr>
<td>Accumulated other comprehensive income (loss)</td>
<td>2</td>
<td>(62)</td>
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<tr>
<td>Members’ equity (deficit)</td>
<td>675</td>
<td>(647)</td>
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<tr>
<td>Accumulated deficit</td>
<td>(1,148)</td>
<td>(1,385)</td>
</tr>
<tr>
<td>Total deficit</td>
<td>(471)</td>
<td>(2,094)</td>
</tr>
<tr>
<td><strong>Total liabilities and deficit</strong></td>
<td>$6,369</td>
<td>$5,788</td>
</tr>
</tbody>
</table>

See the accompanying notes to the combined and consolidated financial statements

F-3
## FOUNDATION TECHNOLOGY WORLDWIDE LLC
### COMBINED (PREDECESSOR) / CONSOLIDATED (SUCCESSOR) STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
**(in millions except per unit data)**

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th></th>
<th>Successor</th>
<th></th>
<th>Successor</th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Period Ended</td>
<td>Fiscal Year Ended</td>
<td>Fiscal Year Ended</td>
<td></td>
<td>Fiscal Year Ended</td>
<td></td>
</tr>
<tr>
<td></td>
<td>April 3, 2017</td>
<td>December 29, 2018</td>
<td>December 28, 2019</td>
<td></td>
<td>December 28, 2019</td>
<td></td>
</tr>
<tr>
<td>Net revenue</td>
<td>$586</td>
<td>$1,490</td>
<td>$2,409</td>
<td>$2,635</td>
<td>$2,635</td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>163</td>
<td>542</td>
<td>840</td>
<td>843</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross profit</td>
<td>423</td>
<td>948</td>
<td>1,569</td>
<td>1,792</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>212</td>
<td>584</td>
<td>815</td>
<td>770</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>127</td>
<td>323</td>
<td>406</td>
<td>380</td>
<td></td>
<td></td>
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<tr>
<td>General and administrative</td>
<td>51</td>
<td>157</td>
<td>253</td>
<td>272</td>
<td></td>
<td></td>
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<tr>
<td>Amortization of intangibles</td>
<td>40</td>
<td>167</td>
<td>232</td>
<td>222</td>
<td></td>
<td></td>
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<tr>
<td>Restructuring and transition charges (Note 9)</td>
<td>66</td>
<td>123</td>
<td>36</td>
<td>22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>496</td>
<td>1,354</td>
<td>1,742</td>
<td>1,666</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(73)</td>
<td>(406)</td>
<td>(173)</td>
<td>126</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(1)</td>
<td>(159)</td>
<td>(307)</td>
<td>(295)</td>
<td></td>
<td></td>
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<tr>
<td>Foreign exchange gain (loss), net</td>
<td>3</td>
<td>(9)</td>
<td>30</td>
<td>20</td>
<td></td>
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<tr>
<td>Loss before income taxes</td>
<td>(71)</td>
<td>(574)</td>
<td>(450)</td>
<td>(149)</td>
<td></td>
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<tr>
<td>Provision for income tax expense</td>
<td>8</td>
<td>33</td>
<td>62</td>
<td>87</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (79)</td>
<td>$ (607)</td>
<td>$ (512)</td>
<td>$ (236)</td>
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<td></td>
</tr>
<tr>
<td>Other comprehensive loss:</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Gain (loss) on interest rate cash flow hedges, net of tax</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>$2</td>
<td>$ (63)</td>
<td></td>
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<tr>
<td>Pension and postretirement benefits loss, net of tax</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Total comprehensive loss</td>
<td>$ (79)</td>
<td>$ (607)</td>
<td>$ (510)</td>
<td>$ (300)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss per unit, basic and diluted</td>
<td>$ (6.58)</td>
<td>$ (5.48)</td>
<td>$ (2.51)</td>
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<tr>
<td>Weighted-average units outstanding, basic and diluted</td>
<td>92.3</td>
<td>93.4</td>
<td>94.1</td>
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<td>Pro forma net loss per share data:</td>
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<td></td>
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<tr>
<td>Pro forma net loss per share, basic and diluted</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Pro forma weighted-average shares of Class A common stock outstanding, basic and diluted</td>
<td></td>
<td></td>
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</tbody>
</table>

See the accompanying notes to the combined and consolidated financial statements

F-4
# Foundation Technology Worldwide LLC
## Combined (Predecessor) / Consolidated (Successor) Statements of Cash Flows

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
<th>Successor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period Ended</td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (79)</td>
<td>$(607)</td>
<td>$(512)</td>
<td>$(236)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</td>
<td></td>
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</tr>
<tr>
<td>Depreciation and amortization</td>
<td>60</td>
<td>386</td>
<td>543</td>
<td>536</td>
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<tr>
<td>Equity-based compensation</td>
<td>23</td>
<td>8</td>
<td>28</td>
<td>25</td>
</tr>
<tr>
<td>Deferred taxes</td>
<td>(13)</td>
<td>(2)</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td>Other operating activities</td>
<td>—</td>
<td>14</td>
<td>(12)</td>
<td>33</td>
</tr>
<tr>
<td>Change in assets and liabilities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>93</td>
<td>(85)</td>
<td>29</td>
<td>(60)</td>
</tr>
<tr>
<td>Deferred costs</td>
<td>(9)</td>
<td>(124)</td>
<td>(26)</td>
<td>(22)</td>
</tr>
<tr>
<td>Other assets</td>
<td>(2)</td>
<td>37</td>
<td>(54)</td>
<td>(71)</td>
</tr>
<tr>
<td>Accounts payable and other current liabilities</td>
<td>(11)</td>
<td>55</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>3</td>
<td>502</td>
<td>309</td>
<td>186</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>(130)</td>
<td>132</td>
<td>4</td>
<td>59</td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>(65)</td>
<td>316</td>
<td>319</td>
<td>496</td>
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<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
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<td></td>
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<tr>
<td>Acquisitions, net of cash acquired</td>
<td>—</td>
<td>—</td>
<td>(615)</td>
<td>(2)</td>
</tr>
<tr>
<td>Additions to property and equipment</td>
<td>(29)</td>
<td>(35)</td>
<td>(61)</td>
<td>(56)</td>
</tr>
<tr>
<td>Other investing activities</td>
<td>19</td>
<td>(4)</td>
<td>(1)</td>
<td>(5)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(10)</td>
<td>(39)</td>
<td>(677)</td>
<td>(63)</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from the issuance of Member units</td>
<td>—</td>
<td>217</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Proceeds from Excess Separation Note from Member</td>
<td>—</td>
<td>25</td>
<td>20</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from long-term debt</td>
<td>—</td>
<td>3,671</td>
<td>504</td>
<td>685</td>
</tr>
<tr>
<td>Proceeds from sales of common stock through employee incentive plans</td>
<td>14</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Payment for the long-term debt due to third party</td>
<td>—</td>
<td>(8)</td>
<td>(87)</td>
<td>(67)</td>
</tr>
<tr>
<td>Payment for the long-term debt due to Members</td>
<td>—</td>
<td>(2,245)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Payment for debt issuance costs</td>
<td>—</td>
<td>(11)</td>
<td>(10)</td>
<td>(6)</td>
</tr>
<tr>
<td>Net change in principal due to debt modification</td>
<td>—</td>
<td>—</td>
<td>52</td>
<td>—</td>
</tr>
<tr>
<td>Distributions to Members</td>
<td>—</td>
<td>(1,562)</td>
<td>—</td>
<td>(1,334)</td>
</tr>
<tr>
<td>Net transfers to parent</td>
<td>(35)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other financing activities</td>
<td>(2)</td>
<td>—</td>
<td>(20)</td>
<td>(13)</td>
</tr>
<tr>
<td>Net cash (used in) provided by financing activities</td>
<td>(23)</td>
<td>87</td>
<td>459</td>
<td>(734)</td>
</tr>
<tr>
<td>Effect of exchange rate fluctuations on cash and cash equivalents</td>
<td>3</td>
<td>7</td>
<td>(4)</td>
<td>—</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>(95)</td>
<td>371</td>
<td>97</td>
<td>(301)</td>
</tr>
<tr>
<td>Cash and cash equivalents, beginning of period</td>
<td>146</td>
<td>—</td>
<td>371</td>
<td>468</td>
</tr>
<tr>
<td>Cash and cash equivalents, end of period</td>
<td>$ 51</td>
<td>$ 371</td>
<td>$ 468</td>
<td>$ 167</td>
</tr>
</tbody>
</table>

See the accompanying notes to the combined and consolidated financial statements

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**FOUNDATION TECHNOLOGY WORLDWIDE LLC**

**COMBINED (PREDECESSOR) / CONSOLIDATED (SUCCESSOR) STATEMENTS OF EQUITY (DEFICIT)
(in millions)**

<table>
<thead>
<tr>
<th>Balance at December 31, 2016, Predecessor</th>
<th>Net Parent Investment</th>
<th>Accumulated Other Comprehensive Income (Loss)</th>
<th>Members' Equity (Deficit)</th>
<th>Accumulated Deficit</th>
<th>Total Net Equity (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at April 3, 2017, Predecessor</td>
<td>$ 3,484</td>
<td>$ (549)</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 2,935</td>
</tr>
</tbody>
</table>

| Balance at December 30, 2017, Successor  |                       |                                               |                           |                     |                          |
| Cumulative effect adjustment from adoption of ASC Topic 606 | —                     | —                                              | —                         | 663                 | (607)                    |
| Other comprehensive income, net of tax | —                     | 2                                              | —                         |                     | 2                        |
| Equity-based awards expense, net of equity withheld to cover taxes | —                     | —                                              | 19                        |                     | 19                       |
| Unit repurchases                       | —                     | —                                              | (7)                       |                     | (7)                      |
| Net loss                               | —                     | —                                              | —                         |                     | (607)                    |

| Balance at December 29, 2018, Successor |                       |                                               |                           |                     |                          |
| Cumulative effect adjustments from adoption of ASC Topic 842 (Note 3) | —                     | —                                              | —                         |                     | (1)                      |
| Distributions to Members               | —                     | —                                              | (1,338)                   |                     | (1,338)                  |
| Other comprehensive loss, net of tax   | —                     | (64)                                          | —                         | —                   | (64)                     |
| Equity-based awards expense, net of equity withheld to cover taxes | —                     | —                                              | 17                        |                     | 17                       |
| Unit issuances                         | —                     | —                                              | 1                         |                     | 1                        |
| Unit repurchases                       | —                     | —                                              | (2)                       |                     | (2)                      |
| Net loss                               | —                     | —                                              | —                         |                     | (236)                    |

| Balance at December 28, 2019, Successor|                       |                                               |                           |                     |                          |
|                                       | $ —                   | $ (62)                                        | $ (647)                   | $ (1,385)           | $(2,094)                 |

See the accompanying notes to the combined and consolidated financial statements

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NOTE 1: BASIS OF PRESENTATION

Background and Principles of Combination (Predecessor) and Consolidation (Successor)

McAfee is a leading-edge cybersecurity company that provides advanced security solutions to consumers, small and medium-sized businesses, large enterprises, and governments. Security technologies from McAfee use a unique, predictive capability that is powered by McAfee Global Threat Intelligence, which enables home users and businesses to stay one step ahead of the next wave of fileless attacks, viruses, malware, and other online threats.

Predecessor

On February 28, 2011, McAfee, Inc. was acquired by Intel Corporation (“Intel”, or “the Parent”, or “parent”) forming the basis of the Intel Security Group (“Predecessor”).

Financial information as of and for the period from January 1, 2017 through April 3, 2017 (collectively the “Predecessor period”), was derived from the consolidated financial statements and accounting records of Intel as if the business had operated on a standalone basis and was prepared in accordance with U.S. generally accepted accounting principles (“GAAP”).

The combined statement of operations and comprehensive loss for the Predecessor period reflects allocations of general corporate expenses from Intel, including but not limited to finance, human resources, procurement, information technology, and other shared services. These allocations were made on a direct-usage basis when identifiable, with the remainder allocated on the basis of proportionate revenue, headcount, or other relevant measures and were considered to be a reasonable reflection of the services provided by Intel and were expensed and reflected as a component of net parent investment in the combined statements of equity. The allocations may not, however, reflect the expenses the Predecessor would have incurred as a stand-alone company for the periods presented. Actual costs that may have been incurred if the Predecessor had operated as a stand-alone company would depend on a number of factors, including the chosen organizational structure, the outsourcing of certain functions, and other strategic decisions.

In addition to the cost of support functions, the Predecessor employees participated in various Intel compensation and benefit plans. A portion of those plan costs, based on actual headcount of active, retired, and other former employees, was included in the accompanying combined financial statements. These costs are not necessarily indicative of costs that would have been incurred had the Predecessor operated on a stand-alone basis.

During the Predecessor period, Intel maintained a centralized treasury function and performed cash management on the Predecessor’s behalf. The Predecessor periodically transferred cash to Intel and generally withheld enough to meet working capital needs. Cash transfers between Intel and the Predecessor were reflected as a component of net parent investment (“NPI”) in the combined statements of equity and the total net effect of the settlement of these related-party transactions were reflected as net transfers to parent in the combined statements of cash flows. The cash balances may not reflect the cash balances the Predecessor would have held as a stand-alone company.

During the Predecessor period, all intercompany transactions within the combined businesses of the Predecessor have been eliminated. Intercompany transactions between the Predecessor and Intel arising from intercompany loan arrangements, periodic bank account sweeps, tax payments, and other similar related-party transactions were considered to be effectively settled in the combined financial statements at the time the transactions were recorded. The total net effect of the settlement of these intercompany transactions were reflected within net parent investment in the combined statements of equity and within net transfers to parent within financing activities in the combined statements of cash flows.
Successor

On April 3, 2017, TPG VII Manta Holdings, L.P., now known as Manta Holdings, L.P. (“Manta”) purchased from Intel a majority interest in Foundation Technology Worldwide LLC (“FTW”), a Delaware limited liability company (“the Transaction”), of which Manta and a subsidiary of Intel are members (collectively the “Members”). Upon completion of the Transaction, Manta owned 51.0% and Intel retained 49.0% of the ownership of FTW. FTW, through ownership in various subsidiaries, wholly owns McAfee, LLC, a Delaware limited liability company, and its consolidated subsidiaries (collectively “McAfee”, the “Company”, “we”, “our”, “us” or “Successor”).

Financial information subsequent to the Transaction (the “Successor period”) includes the accounts of McAfee and was prepared in accordance with U.S. GAAP. All intercompany balances and transactions within McAfee have been eliminated in consolidation. Any transactions between McAfee and Intel, Manta or Manta’s owners are considered transactions with Members. We have reclassified certain prior period amounts to conform to our current period presentation.

We consolidate entities in which we have a controlling financial interest, the usual condition of which is ownership of a majority voting interest. We also consider for consolidation certain interests where the controlling financial interest may be achieved through arrangements that do not involve voting interests. Such an entity, known as a variable interest entity (“VIE”), is required to be consolidated by its primary beneficiary. The primary beneficiary of a VIE is considered to possess the power to direct the activities of the VIE that most significantly impact its economic performance and has the obligation to absorb losses or the right to receive benefits from the VIE that are significant to it.

Use of Estimates

The preparation of the combined and consolidated financial statements required us to make certain estimates and judgments that affect the amounts reported. Actual results may differ materially from our estimates. The accounting estimates that required our most significant and subjective judgments include:

- determining the nature and timing of satisfaction of performance obligations, assessing associated material rights and determining the standalone selling price (“SSP”) of performance obligations;
- prior to adoption of Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers, and all related updates (collectively, “ASC Topic 606”), determining the fair value of each of the elements within multiple-element revenue transactions where vendor specific objective evidence is not available;
- determining our technology constrained customer life;
- projections of future cash flows related to revenue-share and related agreements with our personal computer original equipment manufacturer partners;
- fair value estimates for assets and liabilities acquired in business combinations;
- the valuation and recoverability of identified intangible assets and goodwill;
- recognition and measurement of foreign current and deferred income taxes as well as our uncertain tax positions;
- fair value of our equity awards;
- fair value of long-term debt and related swaps; and
- allocation of expenses attributable to the Predecessor initially recorded by Intel and the determination of the Predecessor’s assets and liabilities otherwise recorded by Intel for the Predecessor period.

Fiscal Calendar

We maintain a 52- or 53-week fiscal year that ends on the last Saturday in December. Period ended April 3, 2017 is an approximately 13-week period starting on January 1, 2017. Period ended December 30, 2017 is an
Functional Currency

Prior to the third quarter of 2015, the Predecessor’s functional currency was primarily the local currency in the respective country where the Predecessor’s legal entities resided. The assets and liabilities of foreign subsidiaries that used local currency as its functional currency were translated to U.S. dollar (“USD”) based on the current exchange rate prevailing at each balance sheet date and any resulting translation adjustments were included in Accumulated other comprehensive income (loss). Revenues and expenses were translated into USD using the average exchange rates prevailing for each period presented. In addition, when a subsidiary entered into transactions that were denominated in currencies other than its functional currency, the assets and liabilities and revenue and expenses related to the transactions were translated into the functional currency, and any resulting gains or losses were recorded in the combined statement of operations and comprehensive loss.

Beginning in the third quarter of 2015, concurrent with restructuring various legal entities, transferring intellectual property rights, and revising foreign intercompany billing and operating structures, the Predecessor’s functional currency was determined to be USD and was prospectively accounted for as such. The USD-translated amounts of non-monetary assets and liabilities at the beginning of the third quarter of 2015 became the historical accounting basis for those assets and liabilities. As such, the Accumulated other comprehensive income (loss) as of December 26, 2015 of $549 million did not change in subsequent periods. After the Transaction, all amounts in Accumulated other comprehensive income (loss) were eliminated. Our functional currency for all of our subsidiaries in the Successor period is USD.

NOTE 2: SIGNIFICANT ACCOUNTING POLICIES

Revenue Recognition

We derive revenue from the sale of security products, subscriptions, software as a service (“SaaS”) offerings, support and maintenance, professional services, or a combination of these items, primarily through our indirect relationships with our partners or direct relationships with end customers through our internal sales force. On December 31, 2017, we adopted ASC Topic 606. Results for the reporting period beginning December 31, 2017 are presented under ASC Topic 606, while prior period amounts are not adjusted and continue to be reported under ASC Topic 605.

We recognize revenue pursuant to the five-step framework within ASC Topic 606:

1. **Identify the contract(s) with a customer**: Contracts are generally evidenced by a binding and non-cancelable purchase order or agreement that creates enforceable rights and obligations.

2. **Identify the performance obligations in the contract**: Performance obligations are the promises contained in the contract to provide distinct goods or services.

3. **Determine the transaction price**: The amount of consideration we expect to be entitled for transferring the promised goods and services to the customer.

4. **Allocate the transaction price to the performance obligations in the contract**: SSP is determined for each performance obligation in the contract and a proportion of the overall transaction price is allocated to each performance obligation based on the relative value of its SSP in comparison to the transaction price except when a discount or variable consideration can be allocated to a specific performance obligation in the contract.

5. **Recognize revenue when (or as) we satisfy a performance obligation**: Recognition for a performance obligation may happen over time or at a point in time depending on the facts and circumstances.
We generally consider our customer to be the entity with which we have a contractual agreement. This could be the end user, or when we sell products and services through the channel, our customer could be either the distributor or the reseller. As part of determining whether a contract exists, probability of collection is assessed on a customer-by-customer basis at the outset of the contract. Customers are subjected to a credit review process that evaluates the customers’ financial position and the ability and intention to pay.

At contract inception, we assess the goods and services promised in our contracts with customers and identify a performance obligation for each promise to transfer to the customer a good or service (or bundle of goods or services) that is distinct — i.e., if a good or service is separately identifiable from other items in the bundled package and if a customer can benefit from it on its own or together with other resources that are readily available to the customer. To identify our performance obligations, we consider all of the goods or services promised in the contract regardless of whether they are explicitly stated or are implied by customary business practices. Determining whether products and services are considered distinct performance obligations or should be combined to create a single performance obligation may require significant judgment. We recognize revenue when (or as) we satisfy a performance obligation by transferring control of a good or service to a customer.

The transaction price is determined based on the consideration to which we will be entitled in exchange for transferring goods or services to the customer, adjusted for estimated variable consideration, if any. We typically estimate the transaction price impact of sales returns and discounts offered to the customers, including discounts for early payments on receivables, rebates or certain distribution partner incentives, including marketing programs. Constraints are applied when estimating variable considerations based on historical experience where applicable.

Once we have determined the transaction price, we allocate it to each performance obligation in a manner depicting the amount of consideration to which we expect to be entitled in exchange for transferring the goods or services to the customer, adjusted for estimated variable consideration, if any. We generally estimate the transaction price impact of sales returns and discounts offered to the customers, including discounts for early payments on receivables, rebates or certain distribution partner incentives, including marketing programs. Constraints are applied when estimating variable considerations based on historical experience where applicable.

To determine the SSP of our goods or services, we conduct a regular analysis to determine whether various goods or services have an observable SSP. If we do not have an observable SSP for a particular good or service, then SSP for that particular good or service is estimated using an approach that maximizes the use of observable inputs. We generally determine SSPs using various methodologies such as historical prices, expected cost plus margin, adjusted market assessment or non-standalone selling prices.

We recognize revenue as control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for the promised goods or services. Revenue is recognized net of any taxes collected from customers and subsequently remitted to governmental authorities. Control of the promised goods or services is transferred to our customers at either a point in time or over time, depending on the performance obligation.

Nature of Products and Services

Certain of our perpetual software licenses or hardware with integrated software are not distinct from their accompanying maintenance and support, as they are dependent upon regular threat updates. These contracts typically contain a renewal option that we have concluded creates a material right for our customer. The license, hardware and maintenance and support revenue is recognized over time, as control is transferred to the customer over the term of the initial contract period while the corresponding material right is recognized over time beginning at the end of the initial contractual period over the remainder of the technology constrained customer life.

Alternatively, certain of our perpetual software licenses, hardware appliances, or hardware with integrated software provide a benefit to the customer that is separable from the related support as they are not dependent
upon regular threat updates. Revenue for these products is recognized at a point in time when control is transferred to our customers, generally at shipment. The related maintenance and support represent a separate performance obligation and the associated transaction price allocated to it is recognized over time as control is transferred to the customer.

The nature of our promise to the customer to provide our SaaS offerings and time-based software licenses and related support and maintenance is to stand ready to provide protection for a specified or indefinite period of time. Maintenance and support in these cases are typically not distinct performance obligations as the licenses are dependent upon regular threat updates to the customer. Instead the maintenance and support is combined with a software license to create a single performance obligation. We typically satisfy these performance obligations over time, as control is transferred to the customer as the services are provided.

Revenue for professional services that are a separate and distinct performance obligation is recognized as services are provided to the customer.

Additional Revenue Recognition Considerations

Royalties and Managed Service Provider Revenues

Our original equipment manufacturer (“OEM”) and managed service provider (“MSP”) sales channels have revenues derived from sales- or usage-based royalties. Such revenue is excluded from any variable consideration and transaction price calculations and is recognized at the later of when the sale or usage occurs, or the performance obligation is satisfied or partially satisfied.

Consideration Payable to a Customer

We make various payments to our channel partners, which may include revenue share, product placement fees and marketing development funds. Costs that are incremental to revenue, such as revenue share, are capitalized and amortized over time as cost of sales (Note 4). Product placement fees and marketing development funds are expensed in sales and marketing expense as the related benefit is received and were $170 million and $142 million for the fiscal year ended December 29, 2018, and fiscal year ended December 28, 2019, respectively.

Under certain of our channel partner agreements, the partners pay us royalties on our technology sold to their customers, which we recognize as revenue in accordance with our revenue recognition policy. In these situations, the payments made to our channel partners are recognized as consideration paid to a customer, and thus are recorded as reductions to revenue up to the amount of cumulative revenue recognized from the contract with the channel partner during the period of measurement.

Payment Terms and Warranties

Our payment terms vary by the type and location of our customer and the products or services offered. The term between invoicing and when payment is due is not significant. For certain products or services and customer types, we require payment before the products or services are delivered to the customer.

We provide assurance warranties on our products and services. The warranty timeframe varies depending on the product or service sold, and the resolution of any issues is at our discretion to either repair, replace, reperform or refund the fee.

Contract Costs

Contract acquisition costs consist mainly of sales commissions and associated fringe benefits, as well as revenue share under programs with certain of our distribution partners. For revenue share, the partner receives a

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percentage of the revenue we receive from an end user upon conversion to a paid customer or renewal. These costs would not have been incurred if the contract was not obtained and are considered incremental and recoverable costs of obtaining a contract with a customer. These costs are capitalized and amortized over time in accordance with Accounting Standards Codification ("ASC") 340-40.

Contract fulfillment costs consist of hardware and software and related costs. These costs are incremental and recoverable and are capitalized and amortized on a systematic basis that is consistent with the pattern of transfer of the goods and services to which the asset relates. We typically recognize the initial commissions that are not commensurate with renewal commissions over the longer of the customer relationship (generally estimated to be four to five years) or over the same period as the initial revenue arrangement to which these costs relate. Renewal commissions paid are generally amortized over the renewal period.

**ASC Topic 605**

Prior to December 31, 2017, we recognized revenue under ASC Topic 605, when all of the following criteria had been met: (1) persuasive evidence of an arrangement exists, (2) delivery has occurred, (3) fee is fixed or determinable, and collectability is probable. For multiple-element arrangements that include perpetual software licenses, support, and/or services, we allocated fair value to each element based on vendor-specific objective evidence ("VSOE"). If VSOE was available, we recognized when the element was delivered. If VSOE was not available for the delivered element, we applied the residual method and recognized revenue for the difference between the total arrangement fee and the aggregate fair value of the undelivered elements.

For software and non-software multiple-element arrangements, we allocated revenue using the relative selling price method to the software elements as a group and non-software elements based on the following selling price hierarchy: (1) VSOE of fair value, (2) third-party evidence ("TPE"), and (3) best estimate of selling price ("BESP"). We then allocated the arrangement within the software group using the residual method. When we were unable to establish a selling price using VSOE or TPE, we used BESP to allocate the arrangement fees to the deliverables. We limited the amount of revenue recognized for delivered elements to an amount that was not contingent upon future delivery of additional products/services or meeting any specified performance conditions.

We recognized product revenue at the time of shipment, provided all other revenue recognition criteria had been met. We recognized service, support, and subscriptions revenue ratably over the contractual period, which typically ranged from one to three years.

Our professional services typically consist of training and implementation services. Professional service revenue was recognized as the services are performed or, if required, upon customer acceptance.

We enter into revenue-sharing agreements with our strategic partners, primarily PC OEMs who load trial or subscription versions of the Company’s products onto their hardware products. We share a percentage of the revenue we receive from the end customer upon trial-to-paid conversion or upon renewal of a paid subscription. We accrued for revenue-sharing agreements within accounts payable and other accrued liabilities in the consolidated balance sheets, which totaled $95 million as of December 30, 2017. Costs that are incremental to revenue, such as revenue share, are capitalized and amortized over time as cost of sales. Product placement fees and marketing development funds are expensed in sales and marketing expense as the related benefit is received. For the period ended April 3, 2017, $34 million and $35 million were included in sales and marketing and cost of sales, respectively. For the period ended December 30, 2017, $135 million and $32 million were included in sales and marketing and cost of sales, respectively.

We have various marketing programs with our business partners who we consider customers and reduced revenue by the cash consideration given, which was presumed to be a reduction of the selling price. We deferred costs of revenue related to revenue-sharing and royalty arrangements and commissions and recognized these costs over the service period of the related revenue which was typically over one to three years.
Advertising Expenses
Marketing programs that are facilitated through third parties not considered customers are expensed as incurred. Total advertising expenses were $13 million, $40 million, $62 million, and $53 million for the period ended April 3, 2017, period ended December 30, 2017, year ended December 29, 2018, and year ended December 28, 2019, respectively, excluding amounts included in sales and marketing as discussed in the revenue recognition section above.

Accounts Receivable
We record accounts receivable at the invoiced amount and maintain an allowance for doubtful accounts to reserve for potentially uncollectible receivables. We review accounts receivable to identify specific customers with known disputes or collectability issues and maintain an allowance for all other receivables not included in the specific reserve by applying a set percentage for projected uncollectible amounts to the accounts receivable balance. In determining this percentage, judgment based on historical collection experience and current economic trends is applied. We recorded an allowance for doubtful accounts of $1 million and less than $1 million as of December 29, 2018 and December 28, 2019, respectively.

Cash and Cash Equivalents
All highly liquid investments with original maturities of 95 days or less are considered cash equivalents.

Goodwill
Goodwill is recorded as the excess of consideration transferred over the acquisition-date fair values of assets acquired and liabilities assumed and primarily comprises the goodwill arising from the Transaction. We assign goodwill to our reporting units based on the relative fair value expected at the time of the acquisition (Note 10).

We perform an annual impairment assessment on the first day of the third month in the fourth quarter or more frequently if indicators of potential impairment exist, which includes evaluating qualitative and quantitative factors to assess the likelihood of an impairment of a reporting unit’s goodwill. For reporting units in which this assessment concludes that it is more likely than not that the fair value is more than its carrying value, goodwill is not considered impaired and we are not required to perform the quantitative goodwill impairment test.

For reporting units in which the impairment assessment concludes that it is more likely than not that the fair value is less than its carrying value, we perform the quantitative goodwill impairment test, which compares the fair value of the reporting unit to its carrying value. Impairments, if any, are based on the excess of the carrying amount over the fair value. Our goodwill impairment test considers the income method and/or market method to estimate a reporting unit’s fair value.

Identified Intangible Assets
We amortize all finite-lived intangible assets that are subject to amortization over their estimated useful life of economic benefit on a straight-line basis (Note 10).

For significant intangible assets subject to amortization, we perform a quarterly assessment to determine whether facts and circumstances indicate that the useful life is shorter than we had originally estimated or that the carrying amount of assets may not be recoverable. If such facts and circumstances exist, we assess recoverability by comparing the projected undiscounted net cash flows associated with the related asset or group of assets over their remaining useful lives against their respective carrying amounts. Impairments, if any, are based on the excess of the carrying amount over the fair value of those assets. If an asset’s useful life is shorter than originally estimated, we accelerate the rate of amortization and amortize the remaining carrying value over the updated, shorter useful life.

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For our intangible assets not subject to amortization, we perform an annual impairment assessment on the first day of the third month in the fourth quarter, or more frequently if indicators of potential impairment exist, to determine whether it is more likely than not that the carrying value of the asset may not be recoverable. If necessary, a quantitative impairment test is performed to compare the fair value of the indefinite-lived intangible asset with its carrying value. Impairments, if any, are based on the excess of the carrying amount over the fair value of the asset.

Research and Development
Costs incurred in the research and development of new software products are expensed as incurred until technological feasibility is established. Research and development costs include salaries and benefits of researchers, supplies, and other expenses incurred during research and development efforts. Development costs are capitalized beginning when a product's technological feasibility has been established and ending when the product is available for general release to customers. Technological feasibility is reached when the product reaches the working-model stage. To date, new products and enhancements generally have reached technological feasibility and have been released for sale at substantially the same time. All research and development costs to date have been expensed as incurred except for software subject to a hosting arrangement.

Software development costs of both internal-use applications and software sold subject to hosting arrangements are capitalized when we have determined certain factors are present, including factors that indicate technology exists to achieve the performance requirements, the decision has been made to develop internally versus buy and our management has authorized the funding for the project. Capitalization of software costs ceases when the software is substantially complete and is ready for its intended use and capitalized costs are amortized over their estimated useful life of three to five years using the straight-line method. When events or circumstances indicate the carrying value of internal use software might not be recoverable, we assess the recoverability of these assets by determining whether the amortization of the asset balance over its remaining life can be recovered through undiscounted future operating cash flows.

Awards
The Predecessor measured compensation cost is measured at the grant date based on the fair value of the award recognized equity-based compensation over the service period of the award. The Predecessor eliminated deferred tax assets for Intel RSUs and stock options with multiple vesting dates for each vesting period on a first-in, first-out basis as if each vesting period was a separate award. Forfeitures are estimated based on a historical forfeiture rate.

Following the Transaction, our Board of Managers of FTW (the “Board”) approved the adoption of the Foundation Technology Worldwide LLC 2017 Management Incentive Plan (the “2017 Incentive Plan”). The 2017 Incentive Plan provides for the grant of Management Incentive Units (“MIUs”), Management Equity Participation Units (“MEPUs”), Cash RSU (“CRSUs”) and Class A Units (including by way of RSUs, settleable upon vesting in Class A Units or in cash) to employees and service providers. We currently provide various equity-based and cash-based compensation to those whom, in the opinion of the Board, are in a position to make a significant contribution to our success.

Equity-based compensation cost is measured at the grant date based on the fair value of the award and cash-based compensation cost is re-assessed at each reporting period. Both types of awards are recognized as expense over the appropriate service period. Determining the fair value of equity-based and cash-based awards requires considerable judgment, including assumptions and estimates of the following:

- fair value of the unit;
- life of the award;
- volatility of the unit price; and
- dividend yield
The fair value of the unit is determined by the Board reasonably and in good faith. Generally, this has involved a review of an independent valuation of our business, which requires judgmental inputs and assumptions such as our cash flow projections, peer company comparisons, market data, growth rates and discount rate. The Board reviews its prior determination of fair value of a unit on a quarterly basis to decide whether any change is appropriate (including whether to obtain a new independent valuation), considering such factors as any significant financial, operational, or market changes affecting the business since the last valuation date. Due to us not having sufficient historical volatility, we use the historical volatilities of publicly traded companies which are similar to us in size, stage of life cycle and financial leverage. We will continue to use this peer group of companies unless a situation arises within the group that would require evaluation of which publicly traded companies are included or once sufficient data is available to use our own historical volatility. In addition, for awards where vesting is dependent upon achieving certain operating performance goals, we estimate the likelihood of achieving the performance goals. For goals dependent upon a qualifying liquidity event, (i.e., a change of control or public offering registered on a Form S-1 (or successor form), in either case, occurring on or before April 3, 2024) (a “Qualifying Liquidity Event”), we will not recognize any expense until the event occurs. Upon consummation of a Qualifying Liquidity Event, we would recognize a cumulative catch-up of expense based on the vesting dates for our time-based awards and expected vesting dates for our performance-based awards. Differences between actual results and these estimates could have a material effect on the consolidated financial results. We recognize forfeitures as they occur.

After the close of the Transaction, our employees are no longer eligible for Intel Awards (as defined below). Prior to the transaction, Intel’s stockholders approved the adoption of the Intel Corporation 2006 Equity Incentive Plan. The plan provides for the grant of stock options, stock appreciation rights, restricted stock, and restricted stock units (collectively “Intel Awards”) to eligible full-time and part-time employees and non-employee directors. These awards generally vested over three or four years. Stock options generally expire seven years from the date of grant. Awards were generally granted with only a time-vesting requirement, but may have had certain performance and/or market conditions required for vesting.

All outstanding Intel Awards were replaced with fixed cash payouts (“retention awards”) or unvested Class A Unit awards (Note 12). After the close of the Skyhigh Networks, Inc. (“Skyhigh”) acquisition (Note 6), Skyhigh employees are no longer eligible for Skyhigh’s equity incentive plan and all outstanding awards were replaced with retention awards or unvested Class A unit awards.

**Derivative and Hedging Instruments**

The fair values of each of our derivative instruments are recorded as an asset or liability on a net basis at the balance sheet date within other current or long-term assets or liabilities. We do not use derivative financial instruments for speculative trading purposes.

To reduce the interest rate risk inherent in variable rate debt, we entered into certain interest rate swap agreements to convert a portion of our variable rate borrowing into a fixed rate obligation (Note 15). These interest rate swap agreements fix the London Interbank Offered Rate (“LIBOR”) portion of the US dollar denominated variable rate borrowings. Accordingly, to the extent the cash flow hedge is effective, changes in the fair value of interest rate swaps will be included within Accumulated other comprehensive income in the consolidated balance sheets. Hedge accounting will be discontinued when the interest rate swap is no longer effective in offsetting cash flows attributable to the hedged risk, the interest rate swap expires or the cash flow hedge is redesigned because it is no longer probable that the forecasted transaction will occur according to the original strategy. When hedge accounting is discontinued, any related amounts previously included in Accumulated other comprehensive income (loss) would be reclassified to Interest and other expense, net, within the consolidated statements of operations and comprehensive loss.

We may manage our exposure to foreign exchange rates through the use of derivative financial instruments. We did not have any foreign exchange hedges as of December 29, 2018 and December 28, 2019.
Income Taxes

Predecessor

Income taxes as presented herein attribute current and deferred income taxes of Intel to the Predecessor’s combined financial statements in a manner that is consistent with the asset and liability method prescribed by the Financial Accounting Standards Board guidance Accounting Standards Codification 740 — Income Taxes. For purposes of these combined financial statements, the Predecessor’s income tax expense and other income tax-related information is computed and reported using the separate return method as if the Predecessor had filed its own tax returns separate from the Intel entities for the periods presented. As a result, actual tax transactions included in the consolidated financial statements of Intel may not be included in the combined financial statements of the Predecessor. Similarly, the tax treatment of certain items reflected in the combined financial statements of the Predecessor may not be reflected in the consolidated financial statements and tax returns of Intel.

The taxable income of the Predecessor entities was historically included in Intel’s consolidated tax returns, where applicable in jurisdictions around the world. As such, separate income tax returns were not prepared for many of the Predecessor entities. Current income tax payables were deemed to have been settled immediately with Intel and offset through NPI.

The Predecessor computed the provision for income taxes under the asset and liability method, which required the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that were included in the financial statements. Under this method, deferred tax assets and liabilities resulting from temporary differences between the financial reporting and tax bases of assets and liabilities were measured as of the balance sheet date using enacted tax rates expected to apply to taxable income in the years the temporary differences were expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities was recognized in income in the period that includes the enactment date.

The realization of deferred tax assets depended upon the existence of sufficient taxable income, of appropriate character, within the carryback or carryforward periods under the tax law in the applicable tax jurisdiction. Valuation allowances were established when the Predecessor determined, based on available information, that it was more likely than not that deferred tax assets would not be realized. Significant judgment was required in determining whether valuation allowances should be established, as well as the amount of such allowances.

The Predecessor recorded accruals for uncertain tax positions when it was believed to be more likely than not that the tax position would not be sustained on examination by the tax authorities based on the technical merits of the position. The Predecessor made adjustments to these accruals when facts and circumstances changed, such as the closing of a tax audit or the refinement of an estimate. The provision for income taxes includes the effects of adjustments for uncertain tax positions, as well as any related interest and penalties.

Successor

FTW is a pass through entity for U.S. federal income tax purposes and will not incur any federal income taxes either for itself or its U.S. subsidiaries that are also pass through or disregarded subsidiaries. Taxable income or loss for these entities will flow through to its respective Members for U.S. tax purposes. FTW does have certain U.S. and foreign subsidiaries that are corporations and are subject to income tax in their respective jurisdiction. The provision for income taxes is calculated under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements.

Leases

We determine if an arrangement contains a lease and classification of that lease, if applicable, at inception based on:

- Whether the contract involves the use of a distinct identified asset;
• Whether we obtain the right to obtain substantially all the economic benefits from the use of the asset throughout the period; and
• Whether we have a right to direct the use of the asset.

Right-of-use (“ROU”) assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make minimum lease payments arising from the lease. A ROU asset is initially measured at an amount which represents the lease liability, plus any initial direct costs incurred and less any lease incentives received. The lease liability is initially measured at lease commencement date based on the present value of minimum lease payments over the lease term. The lease term may include options to extend or terminate when it is reasonably certain that we will exercise the option. We have lease agreements with lease and non-lease components, and the non-lease components are generally accounted for separately and not included in our leased assets and corresponding liabilities.

The depreciable life of assets and leasehold improvements are limited by the expected lease term, unless there is a transfer of title or purchase option reasonably certain of exercise. Payments related to short-term leases are expensed on a straight-line basis over the lease term and reflected as a component of lease cost within our Consolidated statements of operations and comprehensive loss. Lease payments generally consist of fixed amounts, as well as variable amounts based on a market rate or an index which are not material to our consolidated lease cost. Our leases do not contain significant terms and conditions for variable lease payments.

When available, we use the rate implicit in the lease to discount lease payments to present value; however, most of our leases do not provide a readily determinable implicit rate. Therefore, we estimate our incremental borrowing rate to discount the lease payments based on information available at lease commencement. For leases which commenced prior to our adoption of ASU No. 2016-02, Leases, and all related updates (collectively, “ASC Topic 842”), we estimated our incremental borrowing rate as of adoption date based on our credit rating, current economic conditions, and collateralized borrowing.

NOTE 3: RECENT ACCOUNTING STANDARDS

Recently Adopted Accounting Standards

We adopted ASC Topic 842 which primarily requires leases to be recognized on the balance sheet. We adopted the standard using the modified retrospective approach with an effective date as of the beginning of our fiscal year, December 30, 2018. Prior year financial statements were not recast under the new standard and, therefore, those amounts are not presented below. We recognized ROU assets and lease liabilities of $86 million and $93 million, respectively, upon adoption, which included reclassifying lease incentives and deferred rent primarily from Other long-term liabilities on the condensed consolidated balance sheets.

We elected the following practical expedients:

• The package of practical expedients available for expired or existing contracts, which allowed us to carry forward our historical assessments of (1) whether contracts are or contain leases, (2) lease classification and (3) initial direct costs.
• The practical expedient to not recognize a lease liability or ROU asset for short-term leases (leases with a term of twelve months or less which do not include an option to purchase the underlying asset).
• The practical expedient available for the consistent treatment of short-term leases for month to month leases.

Recent Accounting Standards Not Yet Adopted

In June 2016, the Financial Accounting Standards Board (“FASB”) issued ASU 2016-13, Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments (ASU 2016-13) and also issued subsequent amendments to the initial guidance (collectively, “Topic 326”). Topic 326 requires measurement and recognition of expected credit losses for financial assets held. Topic 326 is effective for us in
our first quarter of fiscal 2020, and earlier adoption is permitted. We plan to adopt Topic 326 on December 29, 2019 and anticipate adoption of this standard to have an immaterial impact on our consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15, Intangibles — Goodwill and Other — Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract (“ASU 2018-15”), which clarifies the accounting for implementation costs in cloud computing arrangements. ASU 2018-15 is effective for us in the first quarter of fiscal year 2020, and early adoption is permitted. We plan to adopt ASU 2018-15 on December 29, 2019 and anticipate adoption of this standard to have an immaterial impact on our consolidated financial statements and related disclosures.

In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes (“ASU 2019-12”), which simplifies the accounting for income taxes by removing certain exceptions for recognizing deferred taxes for investments, performing intra-period allocation and calculating income taxes in interim periods. ASU 2019-12 also adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. ASU 2019-12 is effective for us in the first quarter of fiscal year 2021, and early adoption is permitted. We are currently evaluating the impact of this standard in our consolidated financial statements, including accounting policies, processes and systems.

NOTE 4: REVENUE FROM CONTRACTS WITH CUSTOMERS

Deferred Revenue

During 2019, we recognized $1,450 million in revenue from our beginning deferred revenue balance.

During 2018, we recognized $1,240 million in revenue from our beginning deferred revenue balance. We added $38 million to deferred revenue due to effect of business combinations (Note 6). An additional $15 million was recognized from deferred revenue due to changes in estimates resulting from a release of revenue under reserve for a single customer in connection with such customer’s right under certain circumstances to claw-back revenue from us within twelve months of payment.

Transaction Price Allocated to the Remaining Performance Obligations

As of December 28, 2019, we have $2,439 million in estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied), which includes deferred revenue and amounts that will be billed and recognized as revenue in future periods. We expect to recognize revenue on approximately 68% over the next 12 months, 29% in the next 13 to 36 months, with the remaining balance recognized thereafter.

Contract Costs

The following tables summarize the various contract costs capitalized on our consolidated financial statements:

<table>
<thead>
<tr>
<th>Capitalized acquisition costs within:</th>
<th>December 29, 2018</th>
<th>December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred costs</td>
<td>$156</td>
<td>$175</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>72</td>
<td>91</td>
</tr>
<tr>
<td>Total capitalized acquisition costs</td>
<td><strong>$228</strong></td>
<td><strong>$266</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Capitalized fulfillment costs within:</th>
<th>December 29, 2018</th>
<th>December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred costs</td>
<td>$9</td>
<td>$12</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>17</td>
<td>19</td>
</tr>
<tr>
<td>Total capitalized fulfillment costs</td>
<td><strong>$26</strong></td>
<td><strong>$31</strong></td>
</tr>
</tbody>
</table>
The following tables summarize the amortization of contract acquisitions and fulfillment costs on our consolidated financial statements:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amortization of capitalized acquisition costs:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net revenue</td>
<td>$ 25</td>
<td>$ 23</td>
</tr>
<tr>
<td>Cost of sales</td>
<td>141</td>
<td>154</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>58</td>
<td>81</td>
</tr>
<tr>
<td>Total amortization of capitalized acquisition costs</td>
<td>$ 224</td>
<td>$ 258</td>
</tr>
<tr>
<td>Amortization of capitalized fulfillment costs:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>$ 11</td>
<td>$ 12</td>
</tr>
<tr>
<td>Total amortization of capitalized acquisition costs</td>
<td>$ 11</td>
<td>$ 12</td>
</tr>
</tbody>
</table>

There were no impairment losses in relation to capitalized acquisition or fulfillment costs for the fiscal years ended December 29, 2018 and December 28, 2019.

**NOTE 5: LEASES**

As of December 28, 2019, we have operating leases for corporate offices and data centers and no active finance leases. Information related to operating leases was as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash paid for amounts included in the measurement of lease liabilities</td>
<td>$ 38</td>
</tr>
<tr>
<td>Right-of-use assets obtained in exchange for lease obligations</td>
<td>48</td>
</tr>
<tr>
<td>Operating lease expense</td>
<td>46</td>
</tr>
</tbody>
</table>

Balance sheet information related to operating leases was as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other long-term assets</td>
<td>$ 97</td>
</tr>
<tr>
<td>Lease liabilities, current portion</td>
<td>$ 29</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>87</td>
</tr>
<tr>
<td>Total lease liabilities</td>
<td>$ 116</td>
</tr>
</tbody>
</table>

Weighted Average Remaining Lease Term (in years) 7
Weighted Average Discount Rate (percentage) 6.1%
Maturities of operating lease liabilities were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>$33</td>
</tr>
<tr>
<td>2021</td>
<td>$19</td>
</tr>
<tr>
<td>2022</td>
<td>$16</td>
</tr>
<tr>
<td>2023</td>
<td>$12</td>
</tr>
<tr>
<td>2024</td>
<td>$11</td>
</tr>
<tr>
<td>Thereafter</td>
<td>$54</td>
</tr>
<tr>
<td>Total lease payments</td>
<td>$145</td>
</tr>
<tr>
<td>Less imputed interest</td>
<td>($29)</td>
</tr>
<tr>
<td>Total lease liabilities</td>
<td>$116</td>
</tr>
</tbody>
</table>

As of December 28, 2019, we had no additional operating lease commitments.

Disclosures Related to Periods Prior to Adoption of ASC Topic 842

The aggregate future contractual commitments under all non-cancelable leases with an initial term in excess of one year were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$35</td>
</tr>
<tr>
<td>2020</td>
<td>$25</td>
</tr>
<tr>
<td>2021</td>
<td>$12</td>
</tr>
<tr>
<td>2022</td>
<td>$9</td>
</tr>
<tr>
<td>2023</td>
<td>$6</td>
</tr>
<tr>
<td>Thereafter</td>
<td>$22</td>
</tr>
<tr>
<td>Total</td>
<td>$109</td>
</tr>
</tbody>
</table>

Rental expense related to our facilities was $10 million for the predecessor during the period ended April 3, 2017.

Rental expense related to our facilities was $34 million and $32 million during the period ended December 30, 2017 and fiscal year ended December 29, 2018, respectively.

**NOTE 6: ACQUISITION / BUSINESS COMBINATION**

**Successor**

**Acquisition Overview**

Under the acquisition method of accounting, the total purchase consideration is allocated to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values. Accordingly, the assets acquired and liabilities assumed are recorded at their respective fair values as of the date of the acquisition, with the residual consideration transferred recorded as goodwill. The determination of the fair values of the acquired assets and assumed liabilities requires significant judgment, including estimates impacting the determination of estimated lives of tangible and intangible assets, and the calculation of the fair value of inventory, property and equipment, deferred revenue and identified intangible assets. The fair values were determined primarily using the income method using Level 3 inputs (Note 15).
**Transaction Overview**

Our consolidated financial statements reflect the Transaction that occurred on April 3, 2017, which was accounted for as a business combination. The Transaction was accounted for in accordance with the acquisition method of accounting for business combinations with Manta as the acquirer. The related acquisition costs were expensed by both Manta as the accounting acquirer and Intel as the seller and equity contributor. The Company has elected to apply push down accounting as a result of the change in ownership of the Company.

The final allocation of the purchase price was as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net working capital</td>
<td>$315</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>177</td>
</tr>
<tr>
<td>Identified intangible assets (Note 10)</td>
<td>3,248</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>(1,195)</td>
</tr>
<tr>
<td>Deferred income taxes, net</td>
<td>48</td>
</tr>
<tr>
<td>Other assets and liabilities, net</td>
<td>(1)</td>
</tr>
<tr>
<td><strong>Net identifiable assets acquired</strong></td>
<td><strong>$2,592</strong></td>
</tr>
<tr>
<td>Goodwill</td>
<td>1,762</td>
</tr>
<tr>
<td><strong>Total purchase price allocation</strong></td>
<td><strong>$4,354</strong></td>
</tr>
</tbody>
</table>

Goodwill is primarily attributable to expected synergies in our subscription offerings and cross-selling opportunities and it is not deductible for tax purposes.

**Skyhigh Networks, Inc. Overview**

On January 3, 2018, we acquired 100% of the equity of Skyhigh Networks, Inc. ("Skyhigh"), enabling us to integrate their leading cloud access security broker technology within our product offerings. We acquired Skyhigh at a purchase price of $590 million, primarily funded through new debt issuance (Note 13), net of cash received. An additional amount will be recognized as deferred cash and equity in the period in which certain key employees provide required continuing service. The Skyhigh acquisition is accounted for as a business combination.

As of December 29, 2018, the final allocation of the purchase price is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net working capital</td>
<td>$7</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>1</td>
</tr>
<tr>
<td>Identified intangible assets (Note 10)</td>
<td>96</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>(30)</td>
</tr>
<tr>
<td>Deferred income taxes, net</td>
<td>(131)</td>
</tr>
<tr>
<td><strong>Net identifiable assets acquired</strong></td>
<td><strong>$(57)</strong></td>
</tr>
<tr>
<td>Goodwill</td>
<td>647</td>
</tr>
<tr>
<td><strong>Total purchase price allocation</strong></td>
<td><strong>$590</strong></td>
</tr>
</tbody>
</table>

Goodwill is primarily attributable to expected synergies and cross-selling opportunities. Goodwill is not deductible for tax purposes. The results of operations of Skyhigh have been included in our consolidated statements of operations subsequent to the date of acquisition on January 3, 2018 and we recognized $61 million in Net revenue and $112 million of Operating loss related to Skyhigh through the fiscal year ended December 29, 2018.
If we had acquired Skyhigh on January 1, 2017, the Predecessor’s total Net revenue and Loss before taxes on a pro-forma basis for the period ended April 3, 2017 would have been approximately $594 million and $99 million, respectively and our total Net revenue and Loss before taxes on a pro-forma basis for the period ended December 30, 2017 would have been approximately $1,515 million and $657 million, respectively.

In arriving at these pro-forma figures, our results of operations were combined with Skyhigh’s results of operations and then adjusted to give pro-forma effect to:

- lower Skyhigh deferred revenue recognition, due to fair value adjustment of deferred revenue balances;
- additional accruals for retention bonuses;
- amortization of acquired intangible assets; and
- additional interest expense from the Company’s additional borrowings on 1st Lien Term Loans.

The pro-forma results are presented for illustrative purposes only and are not necessarily indicative of or intended to represent the results that would have been achieved had the acquisition been completed on January 1, 2017. For example, the pro-forma results do not reflect any operating efficiencies and associated cost savings that we might have achieved with respect to the acquisitions.

On February 26, 2018, we acquired certain assets and liabilities of TunnelBear, Inc. ("TunnelBear"), enabling us to integrate their leading consumer VPN technology within our own product platform. The TunnelBear acquisition is accounted for as a business combination. We acquired those assets and liabilities for a purchase price of $25 million with an additional amount recognized as deferred cash in the period in which certain key employees provide required continuing service. $11 million of the purchase price relates to identified intangible assets (Note 10). $17 million of goodwill is deductible for tax purposes.

Pro forma results of operations and historical results of operations subsequent to purchase date have not been presented as the results and financial position of Tunnelbear were not material to our financial position or results of operations as of or for the fiscal year ended December 29, 2018.

In connection with the purchase of Skyhigh, we issued 540,000 Class A units with a fair value of $42.69 to certain employees with a holdback provision ("Restricted Class A Units"). Since this holdback provision is akin to a service condition, we recognize expense for these units over the time period in which the restrictive holdback provision expires over 2 years past the acquisition date ("Restricted Class A Unit Vesting"). Additionally, in connection with our acquisitions during the year ended December 29, 2018, we are required to make deferred cash payments of $59 million over the service period required to be completed by certain employees. Deferred
cash and equity is recognized as compensation cost. As of December 28, 2019, our outstanding deferred cash and equity, as it relates to our acquisitions, is as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>(in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding deferred cash and equity balance at December 30, 2017</td>
<td>$ —</td>
</tr>
<tr>
<td>Accruals</td>
<td>39</td>
</tr>
<tr>
<td>Restricted Class A Unit Vesting</td>
<td>(9)</td>
</tr>
<tr>
<td>Cash payment</td>
<td>(17)</td>
</tr>
<tr>
<td>Outstanding deferred cash and equity balance at December 29, 2018</td>
<td>13</td>
</tr>
<tr>
<td>Accruals</td>
<td>35</td>
</tr>
<tr>
<td>Restricted Class A Unit Vesting</td>
<td>(12)</td>
</tr>
<tr>
<td>Cash payment</td>
<td>(16)</td>
</tr>
<tr>
<td>Outstanding deferred cash and equity balance at December 28, 2019</td>
<td>$ 20</td>
</tr>
</tbody>
</table>

As of December 28, 2019, we have unrecognized expense relating to deferred cash and equity of $9 million. Deferred cash is recorded within Accrued compensation and benefits and Other long-term liabilities on the consolidated balance sheets for amounts due in the next 12 months and amounts due after 12 months, respectively. Deferred equity is recorded within Members’ equity (deficit) on the consolidated balance sheets.

**NOTE 7: TRANSACTIONS WITH MEMBERS AND RELATED PARTIES**

**Predecessor**

During the period ended April 3, 2017, the Predecessor engaged in transactions with Intel and other Intel subsidiaries.

Transactions with related parties were as follows:

<table>
<thead>
<tr>
<th>Period Ended April 3, 2017</th>
<th>(in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash management and general financing activities</td>
<td>$ (100)</td>
</tr>
<tr>
<td>Corporate allocations</td>
<td>68</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>23</td>
</tr>
<tr>
<td>Income tax benefits</td>
<td>8</td>
</tr>
<tr>
<td>Total net transfer to parent</td>
<td>$ (1)</td>
</tr>
</tbody>
</table>

A reconciliation of net transfers to parent in the combined (Predecessor) / consolidated (Successor) statement of equity (deficit) to the corresponding amount presented on the combined (Predecessor) / consolidated (Successor) statements of cash flows for all periods presented for the Predecessor period was as follows:

<table>
<thead>
<tr>
<th>Period Ended April 3, 2017</th>
<th>(in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net transfers to parent (Equity)</td>
<td>$ (1)</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>(23)</td>
</tr>
<tr>
<td>Proceeds from sales of shares</td>
<td>(14)</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
</tr>
<tr>
<td>Total net transfer to parent (Cash Flows)</td>
<td>$ (35)</td>
</tr>
</tbody>
</table>
**Successor**

To execute the Transaction, Intel contributed non-cash assets and liabilities into FTW and FTW issued a $1,500 million unsecured note payable (the “Company Note”) to Intel. Manta acquired $1,622 million of equity in FTW from Intel, of which $700 million was converted to Redemption Units that were mandatorily redeemable and had no conversion feature. In September 2017, we paid the Company Note of $1,500 million and Redemption Units of $700 million in full, including accrued interest of $61 million and $29 million, respectively, primarily from funds acquired from the credit facility (Note 13).

We also entered into additional agreements with Intel, which included a $45 million cashless “Excess Separation Note” to fund anticipated separation costs to be paid by Intel in executing our separation and a $250 million revolving credit facility to support working capital needs. In May 2017, we paid the Excess Separation Note of $45 million and accrued interest of $1 million.

During the period ended December 30, 2017, we made two distributions to our Members consisting of $50 million as reimbursement for certain Transaction related costs incurred and a $1,512 million distribution in connection with the credit facility (Note 13). These distributions were reflected as a reduction of Members’ equity (deficit).

We declared tax and excess cash distributions to our members during the year ended December 28, 2019 in aggregate of $1,338 million. As of December 28, 2019, we withheld $1 million and $3 million of the distributions within Accounts payable and other current liabilities and Other long-term liabilities, respectively. The distributions were partially funded through debt issued on June 13, 2019 (Note 13).

Our Intel Receivable, net consisted of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 29, 2018</th>
<th>December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Intel Receivable (1)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax indemnity</td>
<td>$12</td>
<td>$10</td>
</tr>
<tr>
<td>Total</td>
<td>$12</td>
<td>$10</td>
</tr>
<tr>
<td><strong>Intel Payable (1)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax indemnity</td>
<td>$(8)</td>
<td>$(4)</td>
</tr>
<tr>
<td>Total</td>
<td>$(8)</td>
<td>$(4)</td>
</tr>
<tr>
<td><strong>Total, net (2)</strong></td>
<td>$4</td>
<td>$6</td>
</tr>
</tbody>
</table>

(1) We have the contractual right of offset of our receivables and payables with Intel.
(2) As of December 29, 2018, $2 million and $6 million are recorded in Accounts payable and other current liabilities and Other long-term assets on the consolidated balance sheets, respectively. As of December 28, 2019, $2 million and $4 million are recorded in Other current assets and Other long-term assets on the consolidated balance sheets, respectively.
Other transactions with related parties are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sales with related parties:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intel</td>
<td>$19</td>
<td>$3</td>
<td>$10</td>
</tr>
<tr>
<td>Manta Affiliates</td>
<td>8</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$29</td>
<td>$9</td>
<td>$16</td>
</tr>
<tr>
<td><strong>Payments to related parties:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intel</td>
<td>$41</td>
<td>$7</td>
<td>$5</td>
</tr>
<tr>
<td>Intel Affiliates</td>
<td>6</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Manta Owners</td>
<td>8</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Manta Affiliates</td>
<td>25</td>
<td>36</td>
<td>32</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$80</td>
<td>$53</td>
<td>$62</td>
</tr>
</tbody>
</table>

We had these additional transactions with companies who partially own Manta (“Manta Owners”) and companies owned or partially owned by the Manta Owners (“Manta Affiliates”) or Intel (“Intel Affiliates”) and therefore qualify as related parties. These transactions include sales of our products and purchases of various goods or services. Revenue from the sales transactions are recognized in accordance with our revenue recognition policy.

**NOTE 8: OPERATING SEGMENTS**

We have two operating segments, which also represent our reporting units:

- **Enterprise** — Includes computer solutions for small and medium-sized businesses, large enterprises, and governments.
- **Consumer** — Includes security solutions for consumers.

We manage our business activities primarily based on a product-segmentation basis and whether they serve consumers or enterprises. The Chief Operating Decision Maker (“CODM”) allocates resources to and assesses the performance of each operating segment primarily using information about its operating income (loss), net revenue, and depreciation and amortization.
The CODM does not evaluate operating segments using discrete asset information. We allocate all shared expenses to the operating segments. Significant information by segment is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period Ended</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td><strong>Net revenue:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise</td>
<td>$328</td>
<td>$860</td>
</tr>
<tr>
<td>Consumer</td>
<td>258</td>
<td>630</td>
</tr>
<tr>
<td>Total</td>
<td>$586</td>
<td>$1,490</td>
</tr>
<tr>
<td><strong>Depreciation and amortization:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise</td>
<td>$42</td>
<td>$173</td>
</tr>
<tr>
<td>Consumer</td>
<td>18</td>
<td>213</td>
</tr>
<tr>
<td>Total</td>
<td>$60</td>
<td>$386</td>
</tr>
<tr>
<td><strong>Operating income (loss):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise</td>
<td>$(120)</td>
<td>$(359)</td>
</tr>
<tr>
<td>Consumer</td>
<td>47</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>$(73)</td>
<td>$(406)</td>
</tr>
</tbody>
</table>

(1) Prior period amounts have not been adjusted under the modified retrospective method of ASC Topic 606.

A significant portion of the operating segments’ operating expenses are derived from shared resources including research and development, accounting, real estate, information technology, treasury, human resources, procurement and other corporate infrastructure expenses. We allocated these operating expenses to the operating segments based on the estimated utilization of services provided to or benefits received by the operating segments.

Prior to fiscal year 2018, we allocated shared expenses of our administrative functions, including finance, accounting, human resources, legal, operations, information technology and facilities to our reportable segments using a head count ratio of directly attributable employees. Effective fiscal year 2018, the allocation metrics were changed to be based on direct identification for segment specific sites and analysis for each shared function using drivers, including surveyed time, head count or revenue mix from each segment. Based on our best estimate, the change in allocation would have resulted in $39 million higher costs allocated to the Consumer segment and $39 million lower costs allocated to the Enterprise segment for the period ended December 30, 2017.

Revenue by geographic region based on the sell-to address of the end-users is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period Ended</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td><strong>United States</strong></td>
<td>$302</td>
<td>$764</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>284</td>
<td>726</td>
</tr>
<tr>
<td><strong>Total net revenue</strong></td>
<td>$586</td>
<td>$1,490</td>
</tr>
</tbody>
</table>

(1) Prior period amounts have not been adjusted under the modified retrospective method of ASC Topic 606.
Customer Information

There was no end-user Customer that represented 10% or more of our total Net revenue or Accounts receivable, net, for the period ended April 3, 2017, the period ended December 30, 2017, or the fiscal years ending December 29, 2018 and December 28, 2019.

Many of our revenue transactions are conducted through distributors. As such, we had three distributors which exceeded 10% of our Net revenue or Accounts receivable, net:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ingram Micro Inc.</td>
<td>15%</td>
<td>19%</td>
<td>15%</td>
</tr>
<tr>
<td>Arrow Electronics, Inc.</td>
<td>7%</td>
<td>13%</td>
<td>9%</td>
</tr>
<tr>
<td>Tech Data Corporation</td>
<td>10%</td>
<td>11%</td>
<td>8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Distributor</th>
<th>Total Accounts Receivable As of December 29, 2018 (in percent)</th>
<th>Total Accounts Receivable As of December 28, 2019 (in percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ingram Micro Inc.</td>
<td>25%</td>
<td>29%</td>
</tr>
<tr>
<td>Arrow Electronics, Inc.</td>
<td>11%</td>
<td>4%</td>
</tr>
<tr>
<td>Tech Data Corporation</td>
<td>7%</td>
<td>3%</td>
</tr>
</tbody>
</table>

NOTE 9: RESTRUCTURING AND TRANSITION CHARGES

Restructuring charges generally include significant actions impacting the way we manage our business. Employee severance and benefit charges are largely based upon substantive severance plans, while some charges result from mandated requirements in certain foreign jurisdictions. These charges include items such as employee severance, ongoing benefits, and excess payroll costs directly attributable to the restructuring plan. Transition charges include legal, advisory, consulting and other costs directly incurred due to the Transaction and are generally paid when incurred. For the period ended December 30, 2017, transition charges were $63 million and $14 million for Enterprise and Consumer segments, respectively. For the fiscal year ended December 29, 2018 transition charges were $6 million and $1 million for Enterprise and Consumer segments, respectively. During the Predecessor period, Transition charges were paid by Intel on behalf of the Predecessor and were recorded as an increase to net parent investment (Note 7).

Restructuring and transition charges are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Predecessor</th>
<th>Successor Fiscal Year Ended December 29, 2018</th>
<th>Successor Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Severance and Benefits</td>
<td>$ (4)</td>
<td>$ 39</td>
<td>$ 27</td>
</tr>
<tr>
<td>Facility Restructuring</td>
<td>—</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Transition Charges</td>
<td>70</td>
<td>77</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>$ 66</td>
<td>$ 123</td>
<td>$ 36</td>
</tr>
</tbody>
</table>

In July 2017, we announced the McAfee Acceleration Program to better align ourselves around our core business. As part of the program, we have incurred employee severance and benefit and facility restructuring costs of $39 million and $7 million, respectively, recorded in restructuring and transition charges in the consolidated statement of operations and comprehensive loss in the period ended December 30, 2017.
In January 2018, we announced the second phase of the McAfee Acceleration Program to further our alignment toward core business. During the fiscal year ended December 29, 2018, we incurred additional employee severance and benefit and facility restructuring costs of $27 million and $2 million, respectively.

In January 2019, we announced the “Transformation 2019” initiative, in which we are realigning our staffing across various departments. As part of the initiative, we have incurred employee severance and benefits costs and facility restructuring of $20 million and $2 million, respectively, recorded in Restructuring and transition charges in the unaudited condensed consolidated statement of operations and comprehensive loss.

As of December 28, 2019, substantially all of the outstanding employee severance and benefits balances are paid. The balance of our restructuring activities are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Enterprise</th>
<th>Consumer</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employee Severance and Benefits</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As of April 4, 2017</td>
<td>$ 2</td>
<td>$ 1</td>
<td>$ 3</td>
</tr>
<tr>
<td>Additional accruals</td>
<td>32</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td>Cash payments</td>
<td>(31)</td>
<td>(7)</td>
<td>(38)</td>
</tr>
<tr>
<td>As of December 30, 2017</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Additional accruals</td>
<td>22</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td>Cash payments</td>
<td>(24)</td>
<td>(6)</td>
<td>(30)</td>
</tr>
<tr>
<td>As of December 29, 2018</td>
<td>1</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Additional accruals</td>
<td>18</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>Cash payments</td>
<td>(17)</td>
<td>(2)</td>
<td>(19)</td>
</tr>
<tr>
<td>As of December 28, 2019</td>
<td>$ 2</td>
<td>$ —</td>
<td>$ 2</td>
</tr>
</tbody>
</table>

| **Facility Restructuring**  |            |          |       |
| As of April 4, 2017         | $ —        | $ —      | $ —   |
| Additional accruals         | 6          | 1        | 7     |
| Cash payments               | —          | —        | —     |
| As of December 30, 2017     | 6          | 1        | 7     |
| Additional accruals         | 2          | —        | 2     |
| Cash payments               | (4)        | (1)      | (5)   |
| As of December 29, 2018     | 4          | —        | 4     |
| Adjustment(1)               | (4)        | —        | (4)   |
| As of December 28, 2019     | —          | —        | —     |
| **Total restructuring as of December 28, 2019** | $ 2        | $ —      | $ 2   |

(1) Represents a reclassification to reduce ROU assets as part of the transition to ASC Topic 842.

**NOTE 10: GOODWILL AND INTANGIBLE ASSETS, NET**

**Predecessor**

**Goodwill**

During the period ended April 3, 2017, the Predecessor completed an impairment assessment and concluded that goodwill was not impaired.
Intangible Assets, Net

Intangible assets subject to amortization

Amortization expense of identified intangible assets was as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Period Ended April 3, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>Amortization of intangibles $40</td>
</tr>
<tr>
<td>Developed technology</td>
<td>Cost of sales $1</td>
</tr>
<tr>
<td>Licensed technology</td>
<td>Cost of sales $1</td>
</tr>
<tr>
<td><strong>Total amortization expense</strong></td>
<td><strong>$42</strong></td>
</tr>
</tbody>
</table>

For the period ended April 3, 2017, there were no capitalized research and development activities to complete software assets which we intend to sell under hosting arrangements.

Successor

Goodwill

Goodwill activity was as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Consumer</th>
<th>Enterprise</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance as of December 30, 2017</strong></td>
<td>$999</td>
<td>$761</td>
<td>$1,760</td>
</tr>
<tr>
<td>Additions (Note 6)</td>
<td>17</td>
<td>647</td>
<td>664</td>
</tr>
<tr>
<td>Purchase price allocation adjustments(1)</td>
<td>2</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td><strong>Balance as of December 29, 2018</strong></td>
<td>$1,018</td>
<td>$1,408</td>
<td>$2,426</td>
</tr>
<tr>
<td>Additions(2)</td>
<td>—</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Balance as of December 28, 2019</strong></td>
<td>$1,018</td>
<td>$1,410</td>
<td>$2,428</td>
</tr>
</tbody>
</table>

(1) Adjustments to the goodwill recorded as a result of the Transaction.
(2) During the fiscal year ended December 28, 2019, we completed two acquisitions that are not significant to our results of operations, individually or in the aggregate. The consideration for the acquisitions in 2019 primarily consisted of cash and was allocated to goodwill and intangible assets.

During the fourth quarter, we performed our annual impairment assessment. No impairment loss for goodwill or intangibles was recorded during the period ended December 30, 2017 or during the fiscal year ended December 29, 2018 or during the fiscal year ended December 28, 2019.

Intangible Assets, Net

Intangible assets subject to amortization

Identified intangible assets subject to amortization are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Customer relationships and other</th>
<th>Acquired and developed technology</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross Asset Value</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As of December 30, 2017</td>
<td>$1,402</td>
<td>$1,116</td>
<td>$2,518</td>
</tr>
<tr>
<td>Additions (Note 6)(1)</td>
<td>50</td>
<td>57</td>
<td>107</td>
</tr>
<tr>
<td>In-process research and development placed in service</td>
<td>—</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>As of December 29, 2018</td>
<td>1,452</td>
<td>1,212</td>
<td>2,664</td>
</tr>
</tbody>
</table>

F-29
### Intangible Assets

#### Accumulated Amortization

<table>
<thead>
<tr>
<th></th>
<th>Customer relationships and other</th>
<th>Acquired and developed technology</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 30, 2017</strong></td>
<td>(167)</td>
<td>(172)</td>
<td>(339)</td>
</tr>
<tr>
<td><strong>Amortization</strong></td>
<td>(232)</td>
<td>(252)</td>
<td>(484)</td>
</tr>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td>(399)</td>
<td>(424)</td>
<td>(823)</td>
</tr>
<tr>
<td><strong>Net book value as of December 29, 2018</strong></td>
<td>$1,053</td>
<td>$788</td>
<td>$1,841</td>
</tr>
</tbody>
</table>

#### Gross Asset Value

<table>
<thead>
<tr>
<th></th>
<th>Customer relationships and other</th>
<th>Acquired and developed technology</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td>$1,452</td>
<td>$1,212</td>
<td>$2,664</td>
</tr>
<tr>
<td><strong>Other adjustments(1)</strong></td>
<td>(7)</td>
<td>—</td>
<td>(7)</td>
</tr>
<tr>
<td><strong>In-process research and development placed in service</strong></td>
<td>—</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>As of December 28, 2019</strong></td>
<td>1,445</td>
<td>1,215</td>
<td>2,660</td>
</tr>
</tbody>
</table>

#### Accumulated Amortization

<table>
<thead>
<tr>
<th></th>
<th>Customer relationships and other</th>
<th>Acquired and developed technology</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td>(399)</td>
<td>(424)</td>
<td>(823)</td>
</tr>
<tr>
<td><strong>Amortization</strong></td>
<td>(222)</td>
<td>(246)</td>
<td>(468)</td>
</tr>
<tr>
<td><strong>Other adjustments(1)</strong></td>
<td>2</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td><strong>As of December 28, 2019</strong></td>
<td>(619)</td>
<td>(670)</td>
<td>(1,289)</td>
</tr>
<tr>
<td><strong>Net book value as of December 28, 2019</strong></td>
<td>$826</td>
<td>$545</td>
<td>$1,371</td>
</tr>
</tbody>
</table>

#### Intangible assets not subject to amortization

Identified intangible assets not subject to amortization are as follows:

<table>
<thead>
<tr>
<th></th>
<th>In-process research and development(1)</th>
<th>Brand</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 30, 2017</strong></td>
<td>$37</td>
<td>$697</td>
<td>$734</td>
</tr>
<tr>
<td><strong>Additions</strong></td>
<td>3</td>
<td>—</td>
<td>3</td>
</tr>
<tr>
<td><strong>In-process research and development placed in service</strong></td>
<td>(39)</td>
<td>—</td>
<td>(39)</td>
</tr>
</tbody>
</table>
(1) From time to time, we engage in research and development activities to complete software assets which we intend to sell under hosting arrangements (Note 2). Capitalizable costs associated with research and development activities are accumulated in in-process research and development prior to project completion. Upon project completion, all capitalizable costs associated with the completed project are placed in service.

Based on identified intangible assets that are subject to amortization as of December 28, 2019, we expect future amortization expense to be as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Customer relationships and other</th>
<th>Acquired and developed technology</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>$220</td>
<td>$214</td>
<td>$434</td>
</tr>
<tr>
<td>2021</td>
<td>153</td>
<td>179</td>
<td>332</td>
</tr>
<tr>
<td>2022</td>
<td>131</td>
<td>88</td>
<td>219</td>
</tr>
<tr>
<td>2023</td>
<td>104</td>
<td>51</td>
<td>155</td>
</tr>
<tr>
<td>2024</td>
<td>95</td>
<td>13</td>
<td>108</td>
</tr>
<tr>
<td>Thereafter</td>
<td>123</td>
<td>—</td>
<td>123</td>
</tr>
<tr>
<td>Total</td>
<td>$826</td>
<td>$545</td>
<td>$1,371</td>
</tr>
</tbody>
</table>

**NOTE 11: PROPERTY AND EQUIPMENT**

**Predecessor**

The Predecessor computed depreciation using the straight-line method over the estimated useful life of 10-25 years for buildings and 3-5 years for computer equipment and software. Depreciation expense was $18 million for the period ended April 3, 2017.

**Successor**

Property and equipment, net was as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land, buildings and leasehold improvements</td>
<td>$74</td>
<td>$78</td>
</tr>
<tr>
<td>Computer equipment, software and other</td>
<td>197</td>
<td>240</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>14</td>
<td>24</td>
</tr>
<tr>
<td>Total property and equipment</td>
<td>285</td>
<td>342</td>
</tr>
<tr>
<td>Less: accumulated depreciation (107)</td>
<td>(107)</td>
<td></td>
</tr>
<tr>
<td>Total property and equipment, net</td>
<td>$178</td>
<td>$171</td>
</tr>
</tbody>
</table>
We computed depreciation using the straight-line method over the estimated useful life of 10-25 years for buildings and 2-5 years for computer equipment, software and other. For the period ended December 30, 2017, fiscal year ended December 29, 2018 and fiscal year ended December 28, 2019, our depreciation expense was $47 million, $60 million and $68 million, respectively.

The following table summarizes our capital expenditures:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital expenditures</td>
<td>$49</td>
<td>$60</td>
<td>$59</td>
</tr>
<tr>
<td>Accrued capital expenditures</td>
<td>6</td>
<td>5</td>
<td>8</td>
</tr>
</tbody>
</table>

For the period ended December 30, 2017, $8 million of our capital expenditures were funded by Intel.

NOTE 12: EMPLOYEE INCENTIVE / BENEFIT PLANS

Retention Awards

The activities of retention awards within Accrued compensation and benefits on our consolidated balance sheets were as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Balance as of December 29, 2018</th>
<th>Accruals, net of forfeitures</th>
<th>Cash payments</th>
<th>Balance as of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance as of December 29, 2018</td>
<td>$11</td>
<td></td>
<td>$ (23)</td>
<td>$7</td>
</tr>
</tbody>
</table>

As of December 28, 2019, our remaining unrecognized compensation costs related to the retention awards were $10 million with a remaining weighted-average period of less than 1 year.

Class A Unit Awards

RSU activity was as follows:

<table>
<thead>
<tr>
<th>Number of Units (in millions)</th>
<th>Weighted Average Grant-Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance as of December 29, 2018</td>
<td>0.8</td>
</tr>
<tr>
<td>Grants</td>
<td>0.5</td>
</tr>
<tr>
<td>Vested</td>
<td>(0.5)</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Balance as of December 28, 2019</td>
<td>0.7</td>
</tr>
</tbody>
</table>

As of December 28, 2019, our unrecognized compensation costs related to the Class A Unit grants was $19 million with a remaining weighted-average service period of 2.8 years.
Management Incentive and Equity Participation Unit Awards

We granted MIUs and MEPUs to certain employees. The time-based awards’ fair value was calculated using the Black-Scholes model. The performance-based awards’ fair value was calculated using Monte Carlo simulations. The performance-based portion of both awards and the time-based portion of the MEPUs require a Qualifying Liquidity Event to vest. As of December 28, 2019, a Qualifying Liquidity Event was not a probable event and thus, both the performance-based awards and the time-based portion of the MEPUs have not been recognized in compensation costs.

Management Incentive Units

MIU activity was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Time-based</th>
<th></th>
<th>Performance-based</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Units</td>
<td>Weighted Average</td>
<td>Number of Units</td>
</tr>
<tr>
<td></td>
<td>(in millions)</td>
<td>Grant-Date Fair Value</td>
<td>(in millions)</td>
</tr>
<tr>
<td>Balance as of December 29, 2018</td>
<td>1.4</td>
<td>$12.50</td>
<td>1.6</td>
</tr>
<tr>
<td>Grants</td>
<td>0.3</td>
<td>9.38</td>
<td>—</td>
</tr>
<tr>
<td>Vested</td>
<td>(0.4)</td>
<td>12.10</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(0.1)</td>
<td>12.35</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Balance as of December 28, 2019</td>
<td>1.2</td>
<td>$11.93</td>
<td>1.5</td>
</tr>
</tbody>
</table>

As of December 28, 2019, unrecognized compensation costs of the time-based awards were $13 million with a remaining weighted average service period of 2.7 years. The unrecognized compensation costs of the performance-based awards is $7 million.

The weighted average estimated value of the time-based portion of MIUs granted during the period ended December 30, 2017, fiscal year ended December 29, 2018 and fiscal year ended December 28, 2019 was valued using the Black-Scholes model with the following inputs:

<table>
<thead>
<tr>
<th></th>
<th>As of December 30, 2017</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated values</td>
<td>$ 23.93</td>
<td>$ 42.69 - $43.39</td>
<td>$ 34.57</td>
</tr>
<tr>
<td>Expected life (in years)</td>
<td>5.0</td>
<td>3.69 - 4.68</td>
<td>3.17 - 3.22</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>1.8%</td>
<td>2.2% - 2.91%</td>
<td>1.43% - 1.67%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Volatility</td>
<td>45.0%</td>
<td>40.35% - 43.31%</td>
<td>35.91% - 36.37%</td>
</tr>
</tbody>
</table>

In February 2020, we entered into an agreement to repurchase $10 million in Class A Units and MIUs in April 2020, subject to the satisfaction of certain conditions. The number of Class A Units and MIUs to be repurchased is also subject to adjustment for distributions made prior to the repurchase date. During February 2020, we modified the terms of certain MIU grants to provide for vesting subject to the satisfaction of certain conditions, which will result in the recognition of incremental compensation expense of modified awards at fair value at their modification date.
Management Equity Participation Units

MEPU activity as of December 28, 2019 was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number of Time-based Units</th>
<th>Number of Performance-based Units</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance as of December 29, 2018</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grants</td>
<td>0.4</td>
<td>0.1</td>
</tr>
<tr>
<td>Time-vested</td>
<td>(0.3)</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(0.2)</td>
<td>(0.3)</td>
</tr>
<tr>
<td><strong>Balance as of December 28, 2019</strong></td>
<td>1.0</td>
<td>1.1</td>
</tr>
</tbody>
</table>

MEPUs are generally expected to be cash-settled upon a Qualifying Liquidity Event, subject to satisfying the underlying vesting requirements. The time-based MEPUs have a service period of four or five years from the initial grant date. As of December 28, 2019, the estimated fair value was $30 million for the time-based MEPUs. The performance-based MEPUs had an estimated fair value of $15 million using market data as of June 2019. Upon a Qualifying Liquidity Event, the cumulative time-vested MEPUs fair value will be recognized in compensation costs immediately and the remainder will be recognized ratably over the remaining service period.

Cash RSU (“CRSU”)

CRSUs are awards similar to MEPUs, with the exception that these awards do not have a return threshold. As a Qualifying Liquidity Event is not probable at that time, no expense has been recognized. CRSU activity is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance as of December 29, 2018</strong></td>
<td></td>
</tr>
<tr>
<td>Grants</td>
<td>1.5</td>
</tr>
<tr>
<td>Time-vested</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(0.1)</td>
</tr>
<tr>
<td><strong>Balance as of December 28, 2019</strong></td>
<td>1.3</td>
</tr>
</tbody>
</table>

CRSUs are generally expected to be cash-settled upon a Qualifying Liquidity Event, subject to satisfying the underlying vesting requirements. CRSUs have a service period of three or five years from the initial grant date. As of December 28, 2019, the estimated fair value of CRSUs was $44 million. Upon a Qualifying Liquidity Event, the cumulative fair value of time-vested CRSUs will be recognized in compensation costs immediately and the remainder will be recognized ratably over the remaining service period.

Defined Contribution Plans

We provide tax-qualified retirement contribution plans in the United States for the benefit of all full-time employees. The plans are designed to provide employees with an accumulation of funds for retirement on a tax-deferred basis. Additionally, our operations in certain countries require we make payments to defined contribution plans for the benefit of our employees. Under the United States’ 401k and the foreign countries’ various defined contribution plans, we expensed $7 million, $22 million, $32 million and $36 million during the period ended April 3, 2017, period ended December 30, 2017, fiscal year ended December 29, 2018 and fiscal year ended December 28, 2019, respectively.
Defined Benefit Plans

In certain jurisdictions outside the United States, we are required to provide a defined benefit obligation and certain post-retirement benefits. As of December 29, 2018 and December 28, 2019, our net benefit obligation of $9 million and $8 million, respectively, is included within other long-term liabilities on the consolidated balance sheets.

NOTE 13: DEBT

Our long-term debt balance consisted of the following:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Lien USD Term Loan(1)</td>
<td>$2,751</td>
<td>$3,020</td>
</tr>
<tr>
<td>1st Lien Euro Term Loan(2)</td>
<td>837</td>
<td>1,200</td>
</tr>
<tr>
<td>2nd Lien USD Term Loan(3)</td>
<td>535</td>
<td>509</td>
</tr>
<tr>
<td>Long-term debt, net of unamortized discounts</td>
<td>4,123</td>
<td>4,729</td>
</tr>
<tr>
<td>Unamortized deferred financing costs</td>
<td>(15)</td>
<td>(17)</td>
</tr>
<tr>
<td>Current installments of long-term debt</td>
<td>(36)</td>
<td>(43)</td>
</tr>
<tr>
<td><strong>Long-term debt, net</strong></td>
<td><strong>$4,072</strong></td>
<td><strong>$4,669</strong></td>
</tr>
</tbody>
</table>

(1) During the fiscal year ended December 28, 2019, the weighted average interest rate was 6.1%
(2) During the fiscal year ended December 28, 2019, the weighted average interest rate was 3.5%
(3) During the fiscal year ended December 28, 2019, the weighted average interest rate was 11.0%

As of December 28, 2019, the material terms of our outstanding debt is as follows:

<table>
<thead>
<tr>
<th>Debt</th>
<th>Issue Date</th>
<th>Issue Principal</th>
<th>Interest Rate(1)</th>
<th>Interest Payment Frequency</th>
<th>Maturity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Lien</td>
<td>June 2019</td>
<td>$3,087</td>
<td>375 pts above LIBOR</td>
<td>Monthly</td>
<td>September 2024</td>
</tr>
<tr>
<td>1st Lien</td>
<td>June 2019</td>
<td>€1,092</td>
<td>350 pts above EURIBOR</td>
<td>Quarterly</td>
<td>September 2024</td>
</tr>
<tr>
<td>2nd Lien</td>
<td>September 2017</td>
<td>$600</td>
<td>850 pts above LIBOR</td>
<td>Monthly</td>
<td>September 2025</td>
</tr>
</tbody>
</table>

(1) Our First Lien LIBOR and Euro Interbank Offered Rate (“EURIBOR”) interest rates have a floor of 0%. Our Second Lien LIBOR interest rate has a floor of 1%.

Recapitalization

In September 2017, McAfee, LLC entered into the credit facility which contains two 1st Lien Secured Term Loans of $2,555 million and €507 million due September 29, 2024, a $500 million revolving credit facility (with a letter of credit sublimit of $50 million) due September 29, 2022 and a 2nd Lien Secured Term Loan of $600 million due September 29, 2025. The two 1st Lien term loans were issued at a discount to par at a price of 97.99% and 98.49% for the USD and Euro portions, respectively. The 2nd Lien Term Loan was issued at a discount to par at a price of 96.83%. We recognized debt issuance costs of $9 million and $2 million for the term loans and revolving credit facility, respectively. The discount and issuance costs will be amortized over the life of the respective term loans into Interest and other expense, net, in the consolidated statements of operations and comprehensive income. The credit facility is secured by all of the assets of McAfee, LLC and of its direct and indirect subsidiaries.
Proceeds from the credit facility were used to prepay debt and interest due to Members and make a distribution to our Members in September 2017.

Additions to and Modifications of Debt

In January 2018, in order to finance the acquisition of Skyhigh (Note 6), McAfee, LLC entered into an increase of our term loans under the 1st Lien Credit Facility. We increased our 1st Lien USD Term Loan by $324 million and our 1st Lien Euro Term Loan by €150 million, issued at a discount to par at a price of 99.60% and 99.98%, respectively and recognized issuance costs of $10 million. The discount and issuance costs are being amortized over the life of the respective term loans into Interest and other expense, net, in the consolidated statements of operations and comprehensive income. This increase does not change the material terms of our financing arrangements. Substantially all of the U.S. assets acquired by us (Note 6) have been added to the security pledge.

In November 2018, we modified the material terms of our 1st Lien USD and Euro Term Loans, as well as reduced the outstanding principal by $50 million and increased outstanding principal by €90 million, respectively. As a result, we recorded refinancing fees of $3 million within Interest and other expense, net on the consolidated statements of operations and comprehensive income. Additionally, on November 1, 2018, we made a prepayment on our 2nd Lien Term Loan of $50 million. In connection with the prepayment, we recorded refinancing fees of $2 million within Interest and other expense, net on the consolidated statements of operations and comprehensive income.

On June 13, 2019, McAfee, LLC entered into an agreement to increase our term loans under the 1st Lien credit facility. We increased our 1st Lien USD Term Loan by $300 million and our 1st Lien Euro Term Loan by €355 million, issued at a discount to par at a price of 99.24% and 99.50%, respectively and recognized issuance costs of $6 million. The discount and issuance costs are being amortized over the life of the respective term loans into Interest expense and other, net in the consolidated statements of operations and comprehensive loss. Additionally, on June 13, 2019, we modified certain material terms of our 1st Lien and 2nd Lien credit facilities, including, but not limited to, refreshing certain baskets and permitting a distribution to our owners with the proceeds of the increase of our term loans under the 1st Lien credit facility (Note 7). As a result, we capitalized consent fees of $12 million within Long-term debt, net on the consolidated balance sheets.

The amounts of interest paid on our long-term debt are as follow:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD interest payments on long-term debt obligations</td>
<td>$53</td>
<td>$250</td>
<td>$241</td>
</tr>
<tr>
<td>Euro interest payments on long-term debt obligations</td>
<td>€5</td>
<td>€28</td>
<td>€33</td>
</tr>
</tbody>
</table>

As of December 28, 2019, our debt repayment obligations for the five succeeding fiscal years and thereafter are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>Thereafter</th>
<th>Total debt repayment obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$4,799</td>
</tr>
<tr>
<td>Euro</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>USD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Euro</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>USD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Euro</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>USD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Euro</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Revolving Credit Facility

As of December 29, 2018, we had no letters of credit nor borrowings outstanding under our revolving credit facility. As of December 28, 2019, we had a letter of credit of $4 million issued against our revolving credit facility. The commitment fee for the unused portion of the revolving credit facility varies from 0.25% up to 0.50%, and the LIBOR margin of the outstanding borrowings and letters of credit varies from 4.00% to 4.50%, respectively, based upon our 1st Lien Net Leverage Ratio as defined in the credit facility agreement (“1st Lien Net Leverage Ratio”). As of December 28, 2019, our commitment fee was 0.50%.

In November 2018, we modified our revolving credit facility and lowered our LIBOR margin of the outstanding borrowings and letters of credit of 4.00% to 4.50% to the reduced amount of 3.25% to 3.75%. We also lowered the interest rate floor from 1% to 0%. No other material terms have changed.

Debt Covenants and Restrictions

Our credit facilities contain customary covenants, including a customary springing financial maintenance covenant under our revolving credit facility, events of default and change of control provisions. In the event we have outstanding loans and letters of credit under the revolving credit facility of more than $175 million at our reporting date (other than cash collateralized letters of credit and up to $30 million of undrawn letters of credit), we are required to maintain a 1st Lien Net Leverage Ratio less than or equal to 6.30 or be placed in default of our revolving credit facility.

We may be required to make a mandatory prepayment in excess of the 0.25% per quarter amortization of the 1st Lien Term Loans and 2nd Term Loans. The 1st Lien Credit Facility requires us to make a mandatory prepayment, subject to certain exceptions, with:

- 100% of net cash proceeds above a threshold amount of certain asset sales and casualty events, subject to (i) step-downs to (x) 50% if our first lien net leverage ratio is less than or equal to 3.25 to 1.00, but greater than 2.50 to 1.00 and (y) 0% if our first lien net leverage ratio is less than or equal to 2.50 to 1.00 and (ii) reinvestment rights and certain other exceptions;
- 100% of net cash proceeds of the incurrence of certain debt, other than certain debt permitted under the 1st Lien Credit Facility; and
- 50% of annual excess cash flow, subject to (i) a step-down to 25% if our first lien net leverage ratio is less than or equal to 3.25 to 1.00, but greater than 2.50 to 1.00, and (ii) a step-down to 0% if our first lien net leverage ratio is less than or equal to 2.50 to 1.00; provided that such a prepayment is required only in the amount (if any) by which such prepayment exceeds $35 million in such fiscal year.

The 2nd Lien Credit Facility requires us to make a mandatory prepayment, subject to certain exceptions, with:

- 100% of net cash proceeds above a threshold amount of certain asset sales and casualty events, subject to (i) step-downs to (x) 50% if our secured net leverage ratio is less than or equal to 4.25 to 1.00, but greater than 3.50 to 1.00 and (y) 0% if our secured net leverage ratio is less than or equal to 3.50 to 1.00 and (ii) reinvestment rights and certain other exceptions;
- 100% of net cash proceeds of the incurrence of certain debt, other than certain debt permitted under the 2nd Lien Credit Facility; and
- 50% of annual excess cash flow, subject to (i) a step-down to 25% if our secured net leverage ratio is less than or equal to 4.25 to 1.00, but greater than 3.50 to 1.00, and (ii) a step-down to 0% if our secured net leverage ratio is less than or equal to 3.50 to 1.00; provided that such a prepayment is required only in the amount (if any) by which such prepayment exceeds $35 million in such fiscal year.

Failure to comply with these covenants, or the occurrence of any other event of default, could result in acceleration of the borrowings and other financial obligations. We are not in default of any of our debt obligations as of December 28, 2019 and have not been required to make any additional payments above the 0.25% per quarter amortization.
NOTE 14: INCOME TAX

Predecessor

During the Predecessor period, the provision for income taxes was calculated under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the combined financial statements.

The Predecessor’s income tax expense and other income tax-related information was computed and reported using the separate return method. The cutoff method, with respect to measurement of current and deferred taxes, was utilized for the period ended April 3, 2017.

The tax provision for the period ended April 3, 2017 was $8 million. Income taxes paid for the period ended April 3, 2017 was $6 million.

The domestic and foreign components of income before taxes and the provision for taxes consisted of the following:

<table>
<thead>
<tr>
<th>(in millions, except tax rates)</th>
<th>Period Ended April 3, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income (loss) before taxes:</td>
<td></td>
</tr>
<tr>
<td>U.S.</td>
<td>$ (131)</td>
</tr>
<tr>
<td>Non-U.S.</td>
<td>60</td>
</tr>
<tr>
<td>Total income (loss) before taxes</td>
<td>(71)</td>
</tr>
<tr>
<td>Provision for tax expense (benefit):</td>
<td></td>
</tr>
<tr>
<td>Current:</td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>(2)</td>
</tr>
<tr>
<td>State</td>
<td>—</td>
</tr>
<tr>
<td>Non-U.S.</td>
<td>20</td>
</tr>
<tr>
<td>Total current provision for tax expense</td>
<td>18</td>
</tr>
<tr>
<td>Deferred provision for tax expense (benefit):</td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>1</td>
</tr>
<tr>
<td>State</td>
<td>—</td>
</tr>
<tr>
<td>Non-U.S.</td>
<td>(11)</td>
</tr>
<tr>
<td>Total deferred provision for tax expense</td>
<td>(10)</td>
</tr>
<tr>
<td>Total provision for tax expense</td>
<td>$ 8</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>(11.3)%</td>
</tr>
</tbody>
</table>

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The difference between the Predecessor’s tax provision and the tax provision computed at the U.S. federal statutory income tax rate for each period was as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Period Ended April 3, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income taxes computed at the U.S. federal statutory rate</td>
<td>$ (25)</td>
</tr>
<tr>
<td>Non-U.S. income taxed at different rates</td>
<td>(16)</td>
</tr>
<tr>
<td>State tax expense (benefit)</td>
<td>(3)</td>
</tr>
<tr>
<td>U.S. taxation on foreign earnings</td>
<td>11</td>
</tr>
<tr>
<td>Other permanent items</td>
<td>2</td>
</tr>
<tr>
<td>U.S. foreign tax credits</td>
<td>(5)</td>
</tr>
<tr>
<td>U.S. research and development credits</td>
<td>(2)</td>
</tr>
<tr>
<td>Amortization of taxes on intercompany sale</td>
<td>2</td>
</tr>
<tr>
<td>Foreign withholding taxes</td>
<td>2</td>
</tr>
<tr>
<td>Foreign currency translation</td>
<td>—</td>
</tr>
<tr>
<td>Rate change</td>
<td>—</td>
</tr>
<tr>
<td>Change in uncertain tax positions</td>
<td>(3)</td>
</tr>
<tr>
<td>Change in valuation allowance</td>
<td>45</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td><strong>$ 8</strong></td>
</tr>
</tbody>
</table>

The difference in the Predecessor’s tax as computed at the U.S. federal statutory rate and tax provision was primarily driven by the U.S. loss for which a full valuation allowance has been recorded and income in foreign jurisdictions with rates that vary from the U.S. In addition, the Predecessor recognized a tax benefit offset by a change in the valuation allowance upon management’s decision to indefinitely reinvest certain prior years’ non-U.S. income during the fiscal year 2015.

Deferred and Current Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities recognized for financial reporting purposes and their corresponding tax bases. Under the separate return method, the Predecessor was assumed to file hypothetical separate returns with the tax authorities and reports deferred taxes on temporary differences and on any carryforwards that it would claim on its hypothetical return. Accordingly, the deferred tax balances include carryforwards for attributes generated by the Predecessor and utilized by Intel, as well as hypothetical carryforwards for attributes not utilized on a separate return basis.

The Predecessor had not recognized U.S. income tax on $2.4 billion of undistributed earnings for certain non-U.S. subsidiaries as of April 3, 2017. Determination of the amount of any unrecognized deferred income tax liability on this temporary difference was not practicable because of the complexities of the hypothetical calculation. The Predecessor intended to indefinitely reinvest the earnings and other basis differences for certain non-U.S. subsidiaries in those operations.

For the periods presented, the Predecessor’s operations were included in the returns of the Parent in multiple jurisdictions. Current income tax payables were deemed to have been settled immediately with Intel and offset through net parent investment. During all fiscal years and the period presented, the Predecessor recognized interest and penalties related to unrecognized tax benefits within the provision for taxes in the combined statements of operations and comprehensive operations. The additional accrual for interest and penalties related to unrecognized tax benefits was insignificant period ended April 3, 2017.
Successor

FTW is a pass through entity for U.S. federal income tax purposes and will not incur any federal income taxes either for itself or its U.S. subsidiaries that are also pass through or disregarded subsidiaries. Taxable income or loss for these entities will flow through to its respective Members for U.S. tax purposes. FTW does have certain U.S. and foreign subsidiaries that are corporations and are subject to income tax in their respective jurisdiction. The provision for income taxes is calculated under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements.

Income (loss) before income taxes expense includes the following components:

<table>
<thead>
<tr>
<th></th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.</td>
<td>$ (649)</td>
<td>$ (548)</td>
<td>$ (282)</td>
</tr>
<tr>
<td>Non-U.S.</td>
<td>75</td>
<td>98</td>
<td>133</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td><strong>$ (574)</strong></td>
<td><strong>$ (450)</strong></td>
<td><strong>$ (149)</strong></td>
</tr>
</tbody>
</table>

The provision for income tax expense (benefit) consists of the following:

<table>
<thead>
<tr>
<th></th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>$ —</td>
<td>$ 3</td>
<td>$ —</td>
</tr>
<tr>
<td>Non-U.S.</td>
<td>34</td>
<td>49</td>
<td>68</td>
</tr>
<tr>
<td><strong>Total current</strong></td>
<td>34</td>
<td>52</td>
<td>68</td>
</tr>
<tr>
<td><strong>Deferred</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>—</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>State</td>
<td>(1)</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Non-U.S.</td>
<td>—</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total deferred</strong></td>
<td>(1)</td>
<td>10</td>
<td>19</td>
</tr>
<tr>
<td><strong>Provision for income tax expense</strong></td>
<td><strong>$ 33</strong></td>
<td><strong>$ 62</strong></td>
<td><strong>$ 87</strong></td>
</tr>
</tbody>
</table>

The difference between the Company’s tax provision and the tax provision computed at the U.S. federal statutory income tax rate for each period was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income taxes computed at the U.S. federal statutory rate</td>
<td>$ (201)</td>
<td>$ (94)</td>
<td>$ (31)</td>
</tr>
<tr>
<td>Non-U.S. income taxed at different rates</td>
<td>8</td>
<td>33</td>
<td>44</td>
</tr>
<tr>
<td>State tax expense (benefit)</td>
<td>(1)</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Partnership earnings flow through to partners</td>
<td>227</td>
<td>121</td>
<td>72</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Provision for income tax expense</strong></td>
<td><strong>$ 33</strong></td>
<td><strong>$ 62</strong></td>
<td><strong>$ 87</strong></td>
</tr>
</tbody>
</table>

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Our tax provision is largely comprised of withholding tax and non-U.S. income tax. Income taxes paid for the period ended December 30, 2017, fiscal year ended December 29, 2018 and fiscal year ended December 28, 2019 was $29 million, $49 million and $47 million, respectively. A portion of net income taxes has been indemnified by Intel (Note 7).

The components of the deferred tax assets and liabilities are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>As of December 29, 2018</th>
<th>As of December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deferred tax assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accrued compensation and other benefits</td>
<td>$7</td>
<td>$6</td>
</tr>
<tr>
<td>Deferred income</td>
<td>48</td>
<td>51</td>
</tr>
<tr>
<td>Net operating losses</td>
<td>40</td>
<td>32</td>
</tr>
<tr>
<td>Credits</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total deferred tax assets</strong></td>
<td>105</td>
<td>101</td>
</tr>
<tr>
<td><strong>Deferred tax liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licenses and intangibles</td>
<td>(5)</td>
<td>(9)</td>
</tr>
<tr>
<td>Unremitted earnings of non-US subsidiaries</td>
<td>(3)</td>
<td>(5)</td>
</tr>
<tr>
<td>Investment in partnership</td>
<td>(177)</td>
<td>(188)</td>
</tr>
<tr>
<td>Other</td>
<td>(6)</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total deferred tax liabilities</strong></td>
<td>(191)</td>
<td>(202)</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>—</td>
<td>(4)</td>
</tr>
<tr>
<td><strong>Net deferred tax assets (liabilities)</strong></td>
<td>$ (86)</td>
<td>$ (105)</td>
</tr>
</tbody>
</table>

As of December 28, 2019, we had federal, state, and non-U.S. net operating loss carryforwards of $119 million, $84 million, and $13 million, respectively, available to reduce future taxable income. The federal U.S. and a majority of the non-U.S. net operating loss carryforwards have no expiration date. The remaining non-U.S., as well as the U.S. state net operating loss carryforwards expire at various dates through 2038. A significant amount of the net operating loss carryforwards in the U.S. relates to an acquisition and, as a result, is limited in the amount that can be recognized in any one year.

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A reconciliation of the aggregate changes in the balance of gross unrecognized tax benefits was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beginning gross unrecognized tax benefits</strong></td>
<td>$7</td>
<td>$10</td>
<td>$12</td>
</tr>
<tr>
<td>Settlements with taxing authorities</td>
<td>—</td>
<td>(1)</td>
<td>—</td>
</tr>
<tr>
<td>Increases in tax positions for prior years</td>
<td>2</td>
<td>1</td>
<td>—</td>
</tr>
<tr>
<td>Decreases in tax positions for prior years</td>
<td>—</td>
<td>(1)</td>
<td>—</td>
</tr>
<tr>
<td>Increases in tax positions for current year</td>
<td>1</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td><strong>Ending gross unrecognized tax benefits</strong></td>
<td>$10</td>
<td>$12</td>
<td>$27</td>
</tr>
</tbody>
</table>

We recognize interest and penalties related to unrecognized tax benefits within the Provision for income tax expense on the consolidated statements of operations and comprehensive loss.

We consider many factors when evaluating and estimating our tax positions, which may require periodic adjustments and may not accurately anticipate actual outcomes. Tax position recognition is a matter of judgment based on the individual facts and circumstances of our position evaluated in light of all available evidence. As of December 29, 2018 and December 28, 2019, we had uncertain tax positions of $14 million and $27 million, including interest and penalties, respectively, recorded within Other long-term liabilities on the consolidated balance sheets. In the next 12 months, it is reasonably possible to have an audit closure or statute expirations in one of our foreign jurisdictions. Other than what is being disclosed in the Subsequent Events footnote (Note 20), we do not believe the amount to have a significant impact to our consolidated financial statements. A portion of uncertain taxes positions has been indemnified by Intel (Note 7).

In December 2017, the Tax Cuts and Jobs Act of 2017 (the “Act”) was signed into law, making significant changes to the Internal Revenue Code. As a result of our structure being predominately pass through, the effect of the Act does not have a material impact on our financial statements.

In the ordinary course of our business, we are subject to examination by taxing authorities for both direct and indirect taxes in many of the domestic and foreign jurisdictions in which we operate. As of December 28, 2019, with few exceptions, we are no longer subject to review by the state and local taxing authorities prior to 2014 and foreign taxing authorities prior to 2005. We are unable to make a reasonably reliable estimate as to when or if settlements with taxing authorities may occur. However, we do not anticipate that the resolution of these tax matters or any events related thereto will have a material adverse effect on our business, results of operations, financial condition or cash flows.

**NOTE 15: FAIR VALUE OF FINANCIAL INSTRUMENTS AND INTEREST RATE SWAPS**

**Fair Value of Financial Instruments**

For assets and liabilities that are measured using quoted prices in active markets (Level 1), total fair value is the published market price per unit multiplied by the number of units held without consideration of transaction costs, discounts or blockage factors. Assets and liabilities that are measured using significant other observable inputs are valued by reference to similar assets or liabilities (Level 2), adjusted for contract restrictions and other terms specific to that asset or liability. For these items, a significant portion of fair value is derived by reference to quoted prices of similar assets or liabilities in active markets. For all remaining assets and liabilities, fair value is derived using other valuation methodologies, including option pricing models, discounted cash flow models and similar techniques (Level 3) and not based on market exchange, dealer or broker traded transactions. These valuations incorporate certain assumptions and projections in determining the fair value assigned to such assets or liabilities.

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The fair value of our financial instruments are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial instruments not carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt, gross of discounts and deferred issuance costs (Note 13)</td>
<td>$ —</td>
<td>$4,075</td>
<td>$ —</td>
</tr>
<tr>
<td>Financial instruments carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facility restructuring (Note 9)</td>
<td>$ —</td>
<td>$ —</td>
<td>$4</td>
</tr>
<tr>
<td>Interest rate swaps</td>
<td>$ —</td>
<td>$2</td>
<td>$ —</td>
</tr>
<tr>
<td><strong>As of December 28, 2019</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial instruments not carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt, gross of discounts and deferred issuance costs (Note 13)</td>
<td>$ —</td>
<td>$4,817</td>
<td>$ —</td>
</tr>
<tr>
<td>Financial instruments carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest rate swaps</td>
<td>$ —</td>
<td>$(61)</td>
<td>$ —</td>
</tr>
</tbody>
</table>

The fair value of the debt is based on third party quotations and is therefore classified as Level 2. The fair value of our derivative financial instruments, including interest rate swaps, are valued in the market using discounted cash flow techniques. These techniques incorporate Level 1 and Level 2 fair value measurement inputs such as spot rates, foreign currency exchange rates, and the instrument’s term, notional amount and discount rate. The fair value of our facility restructuring approximates carrying value and was calculated using lease payments and discount rates not observable in the market place and are classified as Level 3.

The fair values of our financial instruments included in Cash and cash equivalents, Accounts receivable, net, Other current assets and Accounts payable and accrued liabilities on the consolidated balance sheets approximate their carrying amounts due to their short maturities. We measure the fair value of money market accounts, included in Cash and cash equivalents on the consolidated balance sheets, on a recurring basis and have classified as Level 1 because the fair value is measured with quoted prices in active markets. These amounts have been excluded from the table.

There were no transfers of assets or liabilities between fair value measurement. Transfers between fair value measurement levels are recognized at the end of the reporting period.

**Interest Rate Swaps**

In January 2018, we entered into multiple interest rate swaps in order to fix the LIBOR portion of our USD denominated variable rate borrowings (Note 13). In November 2018, in conjunction with our modification of the 1st Lien USD Term loan, we modified our outstanding interest rate swaps by changing the interest rate floor from 1% to 0% to match our 1st Lien USD Term loan. In connection with this change, we received a cash payment of $1 million. No other material terms have changed. As of December 28, 2019, the outstanding effective hedging arrangements were as follows:

<table>
<thead>
<tr>
<th>Notional Value (in millions)</th>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>Average Fixed Rate (in percentages)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$250</td>
<td>January 29, 2018</td>
<td>January 29, 2020</td>
<td>2.19%</td>
</tr>
<tr>
<td>$225</td>
<td>January 29, 2018</td>
<td>January 29, 2021</td>
<td>2.33%</td>
</tr>
<tr>
<td>$250</td>
<td>January 29, 2018</td>
<td>January 29, 2022</td>
<td>2.41%</td>
</tr>
<tr>
<td>$1,300</td>
<td>January 29, 2018</td>
<td>January 29, 2023</td>
<td>2.48%</td>
</tr>
<tr>
<td>$475</td>
<td>March 29, 2019</td>
<td>March 29, 2024</td>
<td>2.40%</td>
</tr>
</tbody>
</table>
The gross amounts of our interest rate swaps, which are subject to master netting arrangements, were as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Gross amounts recognized</th>
<th>Gross amount offset in Balance Sheets</th>
<th>Net amounts presented in Balance Sheets</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other current assets</td>
<td>$2</td>
<td>$—</td>
<td>$2</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>1</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>(1)</td>
<td>—</td>
<td>(1)</td>
</tr>
<tr>
<td><strong>As of December 28, 2019</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and other current liabilities</td>
<td>(19)</td>
<td>—</td>
<td>(19)</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>(42)</td>
<td>—</td>
<td>(42)</td>
</tr>
</tbody>
</table>

**NOTE 16: ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)**

Adjustments to Accumulated other comprehensive income (loss), net, are as follow:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Gain (Loss) on Cash Flow Hedges</th>
<th>Pension and Postretirement Benefits Gain (Loss)</th>
<th>Accumulated Other Comprehensive Income (Loss), Net</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of December 30, 2017</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other comprehensive income (loss) before reclassifications</td>
<td>—</td>
<td>—</td>
<td>(6)</td>
</tr>
<tr>
<td>Amounts reclassified from accumulated other comprehensive income (loss)</td>
<td>8</td>
<td>—</td>
<td>8</td>
</tr>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other comprehensive income (loss) before reclassifications</td>
<td>2</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td>Amounts reclassified from accumulated other comprehensive income (loss)</td>
<td>(67)</td>
<td>(1)</td>
<td>(68)</td>
</tr>
<tr>
<td><strong>As of December 28, 2019</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other comprehensive income (loss) before reclassifications</td>
<td>—</td>
<td>—</td>
<td>4</td>
</tr>
<tr>
<td>Amounts reclassified from accumulated other comprehensive income (loss)</td>
<td>—</td>
<td>—</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ (61)</td>
<td>$ (1)</td>
<td>$(62)</td>
</tr>
</tbody>
</table>

**NOTE 17: COMMITMENTS AND CONTINGENCIES**

As of December 28, 2019, we have unconditional purchase obligations of $167 million that expire at various dates through 2024 and guarantees of $12 million that expire at various dates through 2028.

As of December 28, 2019, excluding the amounts related to lease obligations which are disclosed in Note 5, the future minimum payments under all unconditional purchase obligations with a remaining term in excess of one year were as follows:

| (in millions) | | |
|---------------|-----------------|
| 2020 | $58 |
| 2021 | 37 |
| 2022 | 35 |
| 2023 | 34 |
| 2024 | 3 |
| Thereafter | — |
| **Total** | $167 |

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We are a party to various legal proceedings that have arisen in the ordinary course of our business. At present, we do not expect that any ordinary course legal proceedings, individually or in the aggregate, will have a material adverse effect on our business, results of operations, financial condition or cash flows.

We also have agreed to indemnify and hold harmless Intel for certain losses actually incurred by Intel. Over the period beginning in July 2017 and continuing through June 2019, Intel has notified the Company of a number of employment-related lawsuits filed in multiple jurisdictions. Intel has requested indemnification of its legal expenses and any awards, judgments or damages arising from the lawsuits. We have assumed the defense and control of all of the lawsuits, and have agreed with Intel to reserve our objections and defenses with respect to indemnification pending the final outcome of each proceeding. At present, we do not expect that these lawsuits, individually or in the aggregate, will have a material adverse effect on our business, results of operations, financial condition or cash flows.

NOTE 18: EARNINGS PER UNIT

<table>
<thead>
<tr>
<th>Period Ended December 30, 2017</th>
<th>Fiscal Year Ended December 29, 2018</th>
<th>Fiscal Year Ended December 28, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss</td>
<td>$ (607)</td>
<td>$ (512)</td>
</tr>
<tr>
<td>Weighted average units outstanding - basic</td>
<td>92.3</td>
<td>93.4</td>
</tr>
<tr>
<td>Incremental units attributable to equity awards(1)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Weighted average units outstanding - diluted</td>
<td>92.3</td>
<td>93.4</td>
</tr>
<tr>
<td>Net loss per unit</td>
<td>$ (6.58)</td>
<td>$ (5.48)</td>
</tr>
</tbody>
</table>

(1) 2.5 million, 3.2 million and 2.7 million units were excluded from dilution. The excluded units consist of RSUs that were excluded from dilution because their effects would have been anti-dilutive for the nine months ended December 30, 2017, fiscal year ended December 29, 2018 and fiscal year ended December 28, 2019, respectively, and unvested MIUs outstanding that share in equity appreciation and future distributions above a return threshold that may impact EPU in future periods.

NOTE 19: PRO FORMA FINANCIAL INFORMATION (UNAUDITED)

Unaudited Pro Forma Tax

Unaudited pro forma financial information has been presented to disclose the pro forma income tax expense and net income attributable to McAfee Corp., the registrant in the accompanying Registration Statement on Form S-1 (“Form S-1”) to register shares of Class A common stock of McAfee Corp. The unaudited pro forma financial information reflects an adjustment to the provision for income taxes to reflect an effective tax rate of %, which was calculated using the U.S. federal income tax rate and the highest statutory rates applied to income apportioned to each state and local jurisdiction. This tax rate has been applied to the % portion of income before taxes that represents the economic interest in Foundation Technology Worldwide LLC that will be held by McAfee Corp. upon completion of the Reorganization Transactions disclosed in this prospectus, but before application of the proceeds of the offering. In addition, pro forma provision for income taxes includes the historical provision for income taxes of $ related to Foundation Technology Worldwide LLC. The sum of these amounts represents total pro forma provision for income taxes of $ .

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Unaudited Pro Forma Net Loss Per Share

Pro forma basic and diluted net loss per share for the fiscal year ended December 28, 2019 has been computed to reflect the number of shares that will be outstanding after the Reorganization Transactions. The unaudited pro forma basic and diluted earnings per share for the fiscal year ended December 28, 2019 does not give effect to the initial public offering and the use of proceeds therefrom. The following table sets forth the computation of the Company’s unaudited pro forma basic and diluted net loss per share for the fiscal year ended December 28, 2019 (in millions, except share and per share amounts):

<table>
<thead>
<tr>
<th>Year Ended December 28, 2019</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro forma net loss per share, basic and diluted</td>
<td>$</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of Class A common stock outstanding, basic and diluted</td>
<td>$</td>
</tr>
<tr>
<td>Weighted-average shares outstanding during the period</td>
<td></td>
</tr>
<tr>
<td>Shares issued in the offering necessary to pay member distributions</td>
<td></td>
</tr>
<tr>
<td>Pro forma weighted-average shares of Class A common stock</td>
<td></td>
</tr>
</tbody>
</table>

NOTE 20: SUBSEQUENT EVENTS

During the first quarter of 2020, we concluded an analysis on the impact of our tax structure resulting from recently enacted tax laws. As a result, we filed an election to treat one of our subsidiary entities as a corporation for U.S federal income tax purposes retroactively back to the first quarter of 2019. This election resulted in the recognition of an income tax benefit of $10 million in the three months ended March 28, 2020.

Peter Leav was appointed as President and Chief Executive Officer, effective February 3, 2020. Mr. Leav succeeds Chris Young, who stepped down as President and Chief Executive Officer effective February 3, 2020 to join TPG Capital as a Senior Advisor.

In February 2020, Michael Berry informed the Company of his intention to resign as Chief Financial Officer and as an employee of the Company, effective March 13, 2020.

For the fiscal year ended December 28, 2019, subsequent events were evaluated through March 5, 2020, the date the consolidated financial statements were available for issue, except for the following, which is as of October 7, 2020 (unaudited).

NOTE 21: SUBSEQUENT EVENTS (UNAUDITED)

In March 2020, we borrowed $300 million under the Revolving Credit Facility pursuant to the 1st Lien Credit Agreement ("Revolving Credit Facility"). The funds were borrowed for general corporate purposes due to seasonality in cash flow generation and as a precautionary measure in response to general market conditions. In June 2020, we repaid the Revolving Credit Facility in full and have no outstanding balance on the Revolving Credit Facility as of June 27, 2020.

Subsequent to December 28, 2019, we declared cash distributions to our Members in the aggregate amount of $201 million.
INDEX TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Unaudited Condensed Consolidated Balance Sheets as of December 28, 2019 and June 27, 2020

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Unaudited Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) for the three and six months ended June 29, 2019 and June 27, 2020

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Unaudited Condensed Consolidated Statements of Cash Flows for the six months ended June 29, 2019 and June 27, 2020

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Unaudited Condensed Consolidated Statements of Members’ Equity (Deficit) for the three and six months ended June 29, 2019 and June 27, 2020

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Notes to the Unaudited Condensed Consolidated Financial Statements

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### Assets

<table>
<thead>
<tr>
<th>Current assets:</th>
<th>As of December 28, 2019</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 167</td>
<td>$ 257</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>409</td>
<td>281</td>
</tr>
<tr>
<td>Deferred costs</td>
<td>187</td>
<td>209</td>
</tr>
<tr>
<td>Other current assets</td>
<td>68</td>
<td>71</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td><strong>831</strong></td>
<td><strong>818</strong></td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>171</td>
<td>162</td>
</tr>
<tr>
<td>Goodwill</td>
<td>2,428</td>
<td>2,431</td>
</tr>
<tr>
<td>Identified intangible assets, net</td>
<td>2,071</td>
<td>1,854</td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>55</td>
<td>59</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>232</td>
<td>224</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>$ 5,788</strong></td>
<td><strong>$ 5,548</strong></td>
</tr>
</tbody>
</table>

| Liabilities, redeemable units, and deficit |

#### Current liabilities:

| Accounts payable and other current liabilities | $ 196 | $ 186 |
| Accrued compensation and benefits             | 209   | 132   |
| Accrued marketing                             | 94    | 99    |
| Income taxes payable                          | 15    | 13    |
| Long-term debt, current portion               | 43    | 43    |
| Lease liabilities, current portion            | 29    | 25    |
| Deferred revenue                              | 1,574 | 1,599 |
| **Total current liabilities**                 | **2,160** | **2,097** |
| Long-term debt, net                           | 4,669 | 4,660 |
| Deferred tax liabilities                      | 160   | 167   |
| Other long-term liabilities                   | 175   | 223   |
| Deferred revenue, less current portion        | 718   | 666   |
| **Total liabilities**                         | **7,882** | **7,813** |

#### Commitments and contingencies (Note 13)

| Redeemable units (Note 5)                     | —     | 17     |

#### Deficit:

| Accumulated other comprehensive income (loss) | (62)  | (143)  |
| Members’ deficit                             | (647) | (785)  |
| Accumulated deficit                          | (1,385)| (1,354)|
| **Total deficit**                            | **(2,094)** | **(2,282)** |

| Total liabilities, redeemable units and deficit | $ 5,788 | $ 5,548 |

See the accompanying notes to the unaudited condensed consolidated financial statements

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**FOUNDATION TECHNOLOGY WORLDWIDE LLC**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**  
(in millions except per unit data)

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th></th>
<th>Six Months Ended</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$ 654</td>
<td>$ 716</td>
<td>$ 1,291</td>
<td>$ 1,401</td>
</tr>
<tr>
<td>Cost of sales</td>
<td>215</td>
<td>206</td>
<td>429</td>
<td>410</td>
</tr>
<tr>
<td>Gross profit</td>
<td>439</td>
<td>510</td>
<td>862</td>
<td>991</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>190</td>
<td>174</td>
<td>383</td>
<td>348</td>
</tr>
<tr>
<td>Research and development</td>
<td>99</td>
<td>92</td>
<td>193</td>
<td>186</td>
</tr>
<tr>
<td>General and administrative</td>
<td>64</td>
<td>60</td>
<td>123</td>
<td>138</td>
</tr>
<tr>
<td>Amortization of intangibles</td>
<td>55</td>
<td>55</td>
<td>113</td>
<td>110</td>
</tr>
<tr>
<td>Restructuring charges (Note 7)</td>
<td>3</td>
<td>—</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>411</td>
<td>381</td>
<td>827</td>
<td>791</td>
</tr>
<tr>
<td>Operating income</td>
<td>28</td>
<td>129</td>
<td>35</td>
<td>200</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(73)</td>
<td>(75)</td>
<td>(143)</td>
<td>(150)</td>
</tr>
<tr>
<td>Foreign exchange gain (loss), net</td>
<td>(12)</td>
<td>(17)</td>
<td>1</td>
<td>(6)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>(57)</td>
<td>37</td>
<td>(107)</td>
<td>44</td>
</tr>
<tr>
<td>Provision for income tax expense</td>
<td>22</td>
<td>15</td>
<td>39</td>
<td>13</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>(79)</td>
<td>22</td>
<td>(146)</td>
<td>31</td>
</tr>
<tr>
<td>Other comprehensive income (loss):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss on interest rate cash flow hedges, net of tax (Note 12)</td>
<td>(39)</td>
<td>(6)</td>
<td>(63)</td>
<td>(81)</td>
</tr>
<tr>
<td>Total comprehensive income (loss)</td>
<td>(118)</td>
<td>(16)</td>
<td>(209)</td>
<td>(50)</td>
</tr>
<tr>
<td>Net income (loss) per unit, basic</td>
<td>$ (0.84)</td>
<td>$ 0.23</td>
<td>$(1.55)</td>
<td>$ 0.33</td>
</tr>
<tr>
<td>Net income (loss) per unit, diluted</td>
<td>$ (0.84)</td>
<td>$ 0.23</td>
<td>$(1.55)</td>
<td>$ 0.32</td>
</tr>
<tr>
<td>Weighted-average units outstanding, basic</td>
<td>94.1</td>
<td>94.4</td>
<td>94.0</td>
<td>94.5</td>
</tr>
<tr>
<td>Weighted-average units outstanding, diluted</td>
<td>94.1</td>
<td>96.9</td>
<td>94.0</td>
<td>97.0</td>
</tr>
<tr>
<td>Pro forma net income per share data:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro forma net income per share, basic (Note 15)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Pro forma net income per share, diluted (Note 15)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of Class A common stock outstanding, basic</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of Class A common stock outstanding, diluted</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

See the accompanying notes to the unaudited condensed consolidated financial statements

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## FOUNDATION TECHNOLOGY WORLDWIDE LLC

### UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(\textit{in millions})

<table>
<thead>
<tr>
<th></th>
<th>Six Months Ended</th>
<th>Six Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$(146)</td>
<td>$31</td>
</tr>
<tr>
<td>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>269</td>
<td>252</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>12</td>
<td>19</td>
</tr>
<tr>
<td>Deferred taxes</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Other operating activities</td>
<td>24</td>
<td>33</td>
</tr>
<tr>
<td>Change in assets and liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>52</td>
<td>126</td>
</tr>
<tr>
<td>Deferred costs</td>
<td>(12)</td>
<td>(22)</td>
</tr>
<tr>
<td>Other assets</td>
<td>(53)</td>
<td>(14)</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>(48)</td>
<td>(29)</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>13</td>
<td>(27)</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>(25)</td>
<td>(86)</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>96</td>
<td>288</td>
</tr>
<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisitions, net of cash acquired</td>
<td>(2)</td>
<td>(5)</td>
</tr>
<tr>
<td>Additions to property and equipment</td>
<td>(20)</td>
<td>(25)</td>
</tr>
<tr>
<td>Other investing activities</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(24)</td>
<td>(33)</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from the issuance of Member units</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Payment for the long-term debt due to third party</td>
<td>(45)</td>
<td>(21)</td>
</tr>
<tr>
<td>Proceeds from long-term debt</td>
<td>702</td>
<td>—</td>
</tr>
<tr>
<td>Payment for debt issuance costs</td>
<td>(23)</td>
<td>—</td>
</tr>
<tr>
<td>Distributions to Members</td>
<td>(1,034)</td>
<td>(130)</td>
</tr>
<tr>
<td>Other financing activities</td>
<td>(7)</td>
<td>(12)</td>
</tr>
<tr>
<td>Net cash used in financing activities</td>
<td>(407)</td>
<td>(162)</td>
</tr>
<tr>
<td><strong>Effect of exchange rate fluctuations on cash and cash equivalents</strong></td>
<td>—</td>
<td>(3)</td>
</tr>
<tr>
<td><strong>Net increase (decrease) in cash and cash equivalents</strong></td>
<td>(335)</td>
<td>90</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents, beginning of period</strong></td>
<td>468</td>
<td>167</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents, end of period</strong></td>
<td>$133</td>
<td>$257</td>
</tr>
</tbody>
</table>

**Supplemental disclosures of noncash investing and financing activities and cash flow information:**

|                                | Six Months Ended | Six Months Ended |
|                                | June 29, 2019    | June 27, 2020    |
| Acquisition of property and equipment included in current liabilities | $3             | $(5)             |
| Distributions to members included in liabilities | 5              | 1                |
| Cash paid during the period for: |                   |                  |
| Interest, net of cash flow hedges | 133            | 141              |
| Income taxes, net of refunds    | 25               | 22               |

See the accompanying notes to the unaudited condensed consolidated financial statements

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<table>
<thead>
<tr>
<th>Date</th>
<th>Accumulated Other Comprehensive Income (Loss)</th>
<th>Members' Equity (Deficit)</th>
<th>Accumulated Deficit</th>
<th>Total Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of March 30, 2019</strong></td>
<td>$ (22)</td>
<td>$ 342</td>
<td>$(1,216)</td>
<td>$(896)</td>
</tr>
<tr>
<td>Distributions to Members</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other comprehensive income, net of tax (Note 12)</td>
<td>(39)</td>
<td>—</td>
<td>—</td>
<td>(39)</td>
</tr>
<tr>
<td>Equity-based awards expense, net of equity withheld to cover taxes</td>
<td>—</td>
<td>5</td>
<td>—</td>
<td>5</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(79)</td>
</tr>
<tr>
<td><strong>As of March 30, 2019</strong></td>
<td>$ (22)</td>
<td>$ 342</td>
<td>$(1,216)</td>
<td>$(896)</td>
</tr>
<tr>
<td><strong>As of March 28, 2020</strong></td>
<td>$ (137)</td>
<td>$ (707)</td>
<td>$(1,376)</td>
<td>$(2,220)</td>
</tr>
<tr>
<td>Distributions to Members</td>
<td>—</td>
<td>(81)</td>
<td>—</td>
<td>(81)</td>
</tr>
<tr>
<td>Other comprehensive loss, net of tax (Note 12)</td>
<td>(6)</td>
<td>—</td>
<td>—</td>
<td>(6)</td>
</tr>
<tr>
<td>Equity-based awards expense, net of equity withheld to cover taxes</td>
<td>—</td>
<td>2</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td>Unit issuances</td>
<td>—</td>
<td>1</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Net income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>22</td>
</tr>
<tr>
<td><strong>As of June 27, 2020</strong></td>
<td>$ (143)</td>
<td>$ (785)</td>
<td>$(1,354)</td>
<td>$(2,282)</td>
</tr>
<tr>
<td><strong>As of December 29, 2018</strong></td>
<td>$ 2</td>
<td>$ 675</td>
<td>$(1,148)</td>
<td>$(471)</td>
</tr>
<tr>
<td>Cumulative effect adjustments from adoption of ASC Topic 842</td>
<td>—</td>
<td>—</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Distributions to Members</td>
<td>—</td>
<td>(1,039)</td>
<td>—</td>
<td>(1,039)</td>
</tr>
<tr>
<td>Other comprehensive loss, net of tax (Note 12)</td>
<td>(63)</td>
<td>—</td>
<td>—</td>
<td>(63)</td>
</tr>
<tr>
<td>Equity-based awards expense, net of equity withheld to cover taxes</td>
<td>—</td>
<td>6</td>
<td>—</td>
<td>6</td>
</tr>
<tr>
<td>Unit repurchases</td>
<td>—</td>
<td>(1)</td>
<td>—</td>
<td>(1)</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(146)</td>
</tr>
<tr>
<td><strong>As of June 29, 2019</strong></td>
<td>$ (61)</td>
<td>$ (359)</td>
<td>$(1,195)</td>
<td>$(1,715)</td>
</tr>
<tr>
<td><strong>As of December 28, 2019</strong></td>
<td>$ (62)</td>
<td>$ (647)</td>
<td>$(1,185)</td>
<td>$(2,094)</td>
</tr>
<tr>
<td>Distributions to Members</td>
<td>—</td>
<td>(131)</td>
<td>—</td>
<td>(131)</td>
</tr>
<tr>
<td>Other comprehensive loss, net of tax (Note 12)</td>
<td>(81)</td>
<td>—</td>
<td>—</td>
<td>(81)</td>
</tr>
<tr>
<td>Equity-based awards expense, net of equity withheld to cover taxes</td>
<td>—</td>
<td>17</td>
<td>—</td>
<td>17</td>
</tr>
<tr>
<td>Unit issuances</td>
<td>—</td>
<td>1</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Unit repurchases (Note 8)</td>
<td>—</td>
<td>(10)</td>
<td>—</td>
<td>(10)</td>
</tr>
<tr>
<td>Reclassification of redeemable units (Note 5)</td>
<td>—</td>
<td>(17)</td>
<td>—</td>
<td>(17)</td>
</tr>
<tr>
<td>Net income</td>
<td>—</td>
<td>—</td>
<td>31</td>
<td>31</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>2</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td><strong>As of June 27, 2020</strong></td>
<td>$ (143)</td>
<td>$ (785)</td>
<td>$(1,354)</td>
<td>$(2,282)</td>
</tr>
</tbody>
</table>

See the accompanying notes to the unaudited condensed consolidated financial statements

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NOTE 1: BASIS OF PRESENTATION

Background
Foundation Technology Worldwide LLC is a Delaware limited liability company (“FTW”), primarily owned by Manta Holdings L.P. (“Manta”) and a subsidiary of Intel Corporation (“Intel”), which through ownership in various subsidiaries, wholly owns McAfee, LLC, a Delaware limited liability company (“McAfee, LLC”) and its consolidated subsidiaries (collectively “McAfee”, the “Company”, “we”, “our” or “us”).

McAfee is a leading-edge cybersecurity company that provides advanced security solutions to consumers, small and medium-sized businesses, large enterprises, and governments. Security technologies from McAfee use a unique, predictive capability that is powered by McAfee Global Threat Intelligence, which enables home users and businesses to stay one step ahead of the next wave of fileless attacks, viruses, malware, and other online threats.

Principles of Consolidation
All intercompany balances and transactions within McAfee have been eliminated in consolidation. Any transactions between McAfee and Intel, Manta or Manta’s owners are considered transactions with Members. These unaudited condensed consolidated financial statements should be read in conjunction with our audited consolidated financial statements as of and for the period ended December 28, 2019. These unaudited condensed consolidated financial statements, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for a fair statement of our financial information. The condensed consolidated balance sheet as of December 28, 2019, has been derived from the audited financial statements as of that date, but it does not include all of the information and footnotes required by U.S. generally accepted accounting principles (“GAAP”) for complete financial statements.

Our functional currency for all of our subsidiaries is the U.S. dollar (“USD”).

Use of Estimates
The preparation of the condensed consolidated financial statements required us to make certain estimates and judgments that affect the amounts reported. Actual results may differ materially from our estimates. The accounting estimates that required our most significant and subjective judgments include:

- determining the nature and timing of satisfaction of performance obligations, assessing any associated material rights and determining the standalone selling price (“SSP”) of performance obligations;
- determining our technology constrained customer life;
- projections of future cash flows related to revenue share and related agreements with our personal computer original equipment manufacturer partners;
- fair value estimates for assets and liabilities acquired in business combinations;
- the valuation and recoverability of identified intangible assets and goodwill;
- recognition and measurement of foreign current and deferred income taxes as well as our uncertain tax positions;
- determining our discount rates;
- fair value of our equity awards; and
- fair value of long-term debt and related swaps.
The effect of the novel coronavirus pandemic (“COVID-19”) on our business, operations, and financial results is dependent upon future developments, including the duration of the pandemic and the related length of its impact on the global economy, which are unknown at this time. As a result, some of our estimates and assumptions required increased judgment and carry a higher degree of variability and volatility. As events continue to evolve and additional information becomes available, several of our estimates and assumptions may change materially in future periods due to the impact of the COVID-19 pandemic.

Fiscal Calendar
We maintain a 52- or 53-week fiscal year that ends on the last Saturday in December. The year ending December 26, 2020 is a 52-week year starting on December 29, 2019. These condensed consolidated financial statements are presented as of December 28, 2019 and June 27, 2020 and for the periods from December 30, 2018 through June 29, 2019 and December 29, 2019 through June 27, 2020.

NOTE 2: RECENT ACCOUNTING STANDARDS

Recently Adopted Accounting Standards
In June 2016, the Financial Accounting Standards Board (“FASB”) issued ASU 2016-13, Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial instruments (ASU 2016-13) and also issued subsequent amendments to the initial guidance (collectively, “Topic 326”). Topic 326 requires measurement and recognition of expected credit losses for financial assets held. We early adopted Topic 326 on December 29, 2019 and it had an immaterial impact on our consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15, Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract (“ASU 2018-15”), which clarifies the accounting for implementation costs in cloud computing arrangements. We early adopted ASU 2018-15 on December 29, 2019 prospectively, which had an immaterial impact on our consolidated financial statements and related disclosures.

In March 2020, the FASB issued ASU 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting (“ASU 2020-04”). The standard provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions, subject to meeting certain criteria, that reference LIBOR or another rate that is expected to be discontinued. We adopted ASU 2020-04 on June 27, 2020 and it had no impact on our consolidated financial statements and related disclosures. The guidance is potentially applicable when we modify the current reference rate of LIBOR to another reference rate on our 1st Lien USD Term Loan and 2nd Lien Term Loan (Note 9) and related interest rate swaps (Note 11).

Recent Accounting Standards Not Yet Adopted
In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes (“ASU 2019-12”), which simplifies the accounting for income taxes by removing certain exceptions for recognizing deferred taxes for investments, performing intra-period allocation and calculating income taxes in interim periods. ASU 2019-12 also adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. ASU 2019-12 is effective for us in the first quarter of fiscal year 2021, and early adoption is permitted. We are currently evaluating the impact of this standard on our consolidated financial statements, including accounting policies, processes and systems.
NOTE 3: REVENUE FROM CONTRACTS WITH CUSTOMERS

Deferred Revenue

During the six months ended June 29, 2019, we recognized $932 million from our deferred revenue balance as of December 29, 2018. During the six months ended June 27, 2020, we recognized $1,000 million in revenue from our deferred revenue balance as of December 28, 2019.

Transaction Price Allocated to the Remaining Performance Obligations

As of June 27, 2020, we have $2,408 million in estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied), which includes deferred revenue and amounts that will be billed and recognized as revenue in future periods. We expect to recognize revenue on approximately 70% over the next 12 months, 27% in next 13 to 36 months, with the remaining balance recognized thereafter.

NOTE 4: LEASES

As of June 27, 2020, we have operating leases primarily for corporate offices and data centers and no active finance leases. Information related to operating leases was as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Six Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
</tr>
<tr>
<td>Cash paid for amounts included in the measurement of lease liabilities</td>
<td>$ 19</td>
</tr>
<tr>
<td>Right-of-use assets obtained in exchange for lease obligations</td>
<td>54</td>
</tr>
</tbody>
</table>

NOTE 5: TRANSACTIONS WITH MEMBERS AND RELATED PARTIES

We declared cash distributions to our Members during the three and six months ended June 27, 2020 in the aggregate amount of $81 million and $131 million, respectively.

In February 2020, we entered into an agreement with our former President and Chief Executive Officer to repurchase equity units for an aggregate repurchase price of $10 million which we repurchased during the three months ended June 27, 2020. We also agreed to repurchase approximately 0.5 million Management Incentive Units (“MIUs”), which is classified as temporary equity within Redeemable units, in April 2021 at fair market value, contingent on the satisfaction of certain terms and conditions. Upon a sale of the company or an IPO prior to the repurchase date, the amount would no longer be repurchased. As of June 27, 2020, the estimated value of the April 2021 repurchase was $17 million.
Our Intel receivable, net consisted of the following:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>December 28, 2019</th>
<th>June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intel receivable(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax indemnity</td>
<td>$10</td>
<td>$8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$10</td>
<td>$8</td>
</tr>
<tr>
<td>Intel payable(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax indemnity</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>(4)</td>
<td>(2)</td>
</tr>
<tr>
<td><strong>Total, net(2)</strong></td>
<td>$6</td>
<td>$6</td>
</tr>
</tbody>
</table>

(1) We have the contractual right of offset of our receivables and payables with Intel.
(2) As of December 28, 2019, $2 million and $4 million are recorded in Other current assets and Other long-term assets, respectively, on the condensed consolidated balance sheet. As of June 27, 2020, $1 million and $5 million are recorded in Other current assets and Other long-term assets, respectively, on the condensed consolidated balance sheet.

Other transactions with related parties are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Three Months Ended</th>
<th>Six Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Sales with related parties:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manta Affiliates</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$2</td>
<td>$2</td>
</tr>
<tr>
<td>Payments to related parties:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intel</td>
<td>$2</td>
<td>$2</td>
</tr>
<tr>
<td>Manta Owners</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Manta Affiliates</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$21</td>
<td>$15</td>
</tr>
</tbody>
</table>

We had these additional transactions with companies who partially own Manta (“Manta Owners”) and companies owned or partially owned by the Manta Owners (“Manta Affiliates”) or Intel (“Intel Affiliates”) and therefore qualify as related parties. These transactions include sales of our products and purchases of various goods or services. Revenue from the sales transactions are recognized in accordance with our revenue recognition policy.

**NOTE 6: OPERATING SEGMENTS**

We have two operating segments, which also represent our reporting units:

- Enterprise – Includes security solutions for large enterprises, governments, small and medium-sized businesses.
- Consumer – Includes security solutions for consumers.

We manage our business activities primarily on a product-segmentation basis and whether they serve consumers or enterprises. The Chief Operating Decision Maker (“CODM”) allocates resources to and assesses the performance of each operating segment primarily using information about its operating income (loss), net revenue, and depreciation and amortization.
The CODM does not evaluate operating segments using discrete asset information. We allocate all shared expenses to the operating segments. Significant information by segment is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th></th>
<th>Six Months Ended</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td><strong>Net revenue:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise</td>
<td>$ 334</td>
<td>$ 333</td>
<td>$ 657</td>
<td>$ 664</td>
</tr>
<tr>
<td>Consumer</td>
<td>320</td>
<td>383</td>
<td>634</td>
<td>737</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 654</td>
<td>$ 716</td>
<td>$1,291</td>
<td>$1,401</td>
</tr>
<tr>
<td><strong>Depreciation and amortization:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise</td>
<td>$ 63</td>
<td>$ 53</td>
<td>$ 129</td>
<td>$ 116</td>
</tr>
<tr>
<td>Consumer</td>
<td>69</td>
<td>67</td>
<td>140</td>
<td>136</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 132</td>
<td>$ 120</td>
<td>$269</td>
<td>$252</td>
</tr>
<tr>
<td><strong>Operating income (loss):</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enterprise</td>
<td>$(34)</td>
<td>$ 25</td>
<td>$(92)</td>
<td>$(1)</td>
</tr>
<tr>
<td>Consumer</td>
<td>62</td>
<td>104</td>
<td>127</td>
<td>201</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 28</td>
<td>$ 129</td>
<td>$ 35</td>
<td>$ 200</td>
</tr>
</tbody>
</table>

**Revenue by geographic region based on the sell-to address of the end-users is as follows:**

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th></th>
<th>Six Months Ended</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>United States</td>
<td>$ 351</td>
<td>$ 395</td>
<td>$ 690</td>
<td>$ 771</td>
</tr>
<tr>
<td>Other</td>
<td>303</td>
<td>321</td>
<td>601</td>
<td>630</td>
</tr>
<tr>
<td><strong>Total net revenue</strong></td>
<td>$ 654</td>
<td>$ 716</td>
<td>$1,291</td>
<td>$1,401</td>
</tr>
</tbody>
</table>

**NOTE 7: RESTRUCTURING CHARGES**

Restructuring charges generally include significant actions impacting the way we manage our business. Employee severance and benefit charges are largely based upon substantive severance plans, while some charges result from mandated requirements in certain foreign jurisdictions. These charges include items such as employee severance, ongoing benefits, and excess payroll costs directly attributable to the restructuring plan.

Restructuring charges are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th></th>
<th>Six Months Ended</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td><strong>Employee severance and benefits</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$ 3</td>
<td>$ —</td>
<td>$ 15</td>
<td>$ 9</td>
</tr>
<tr>
<td></td>
<td>$ 3</td>
<td>$ —</td>
<td>$ 15</td>
<td>$ 9</td>
</tr>
</tbody>
</table>
In January 2020, we commenced the 2020 transformation initiative, in which we are realigning our staffing across various departments. As part of the initiative, we have incurred employee severance and benefits costs of $9 million recorded in restructuring charges in the condensed consolidated statement of operations and comprehensive loss for the six months ended June 27, 2020.

The balance of our restructuring activities are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Enterprise</th>
<th>Consumer</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee severance and benefits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As of December 28, 2019</td>
<td>$2</td>
<td>$—</td>
<td>$2</td>
</tr>
<tr>
<td>Additional accruals</td>
<td>8</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Cash payments</td>
<td>(10)</td>
<td>(1)</td>
<td>(11)</td>
</tr>
<tr>
<td>As of June 27, 2020</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
</tr>
</tbody>
</table>

NOTE 8: EMPLOYEE INCENTIVES

During February 2020, we modified the terms of a MIU grant to provide for vesting subject to the satisfaction of certain conditions, which resulted in the recognition of $12 million in incremental compensation expense for the modified awards at their modification date.

Deferred Cash and Equity

As of June 27, 2020, our outstanding deferred cash and equity related to our acquisitions is as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Out 2019</th>
<th>Accruals</th>
<th>Restricted Class A Unit vesting</th>
<th>Cash payment</th>
<th>Outstanding def cash and equity balance at June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding deferred cash and equity balance at December 28, 2019</td>
<td>$20</td>
<td>6</td>
<td>(3)</td>
<td>(15)</td>
<td>$8</td>
</tr>
</tbody>
</table>

As of June 27, 2020, we have unrecognized expense relating to deferred cash of $12 million with a remaining weighted average service period of 1.1 years. Deferred cash is recorded within Accrued compensation and benefits on the condensed consolidated balance sheet for amounts due in the next 12 months.

During the six months ended June 27, 2020, we granted 0.8 million Restricted Stock Units (“RSU”s) with a grant date fair value of $26 million. RSUs are generally expected to vest over a 4-year period.

During the six months ended June 27, 2020, we granted 2.4 million Cash Restricted Stock Units (“CRSU”s) with a grant date fair value of $84 million. CRSUs are generally expected to be cash-settled upon a qualifying liquidity event (i.e., a change of control or public offering registered on a Form S-1 (or successor form), in either case, occurring on or before April 3, 2024) and this group of awards vests over a 4-year period.
NOTE 9: DEBT

Our long-term debt balance consisted of the following:

<table>
<thead>
<tr>
<th>Long-term debt, net:</th>
<th>As of December 28, 2019</th>
<th>As of June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Lien USD Term Loan(1)</td>
<td>$3,020</td>
<td>$3,009</td>
</tr>
<tr>
<td>1st Lien Euro Term Loan(2)</td>
<td>1,200</td>
<td>1,199</td>
</tr>
<tr>
<td>2nd Lien USD Term Loan(3)</td>
<td>509</td>
<td>511</td>
</tr>
<tr>
<td>Long-term debt, net of unamortized discounts</td>
<td>$4,729</td>
<td>$4,719</td>
</tr>
<tr>
<td>Unamortized deferred financing costs</td>
<td>(17)</td>
<td>(16)</td>
</tr>
<tr>
<td>Current installments of long-term debt</td>
<td>(43)</td>
<td>(43)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,669</strong></td>
<td><strong>$4,660</strong></td>
</tr>
</tbody>
</table>

(1) During the six months ended June 27, 2020, the weighted average interest rate was 4.9%
(2) During the six months ended June 27, 2020, the weighted average interest rate was 3.5%
(3) During the six months ended June 27, 2020, the weighted average interest rate was 9.8%

Long-Term Debt

As of June 27, 2020, the material terms of our outstanding debt remain unchanged from those described in our consolidated financial statements as of December 28, 2019.

Revolving Credit Facility

In March 2020, we borrowed $300 million under the Revolving Credit Facility pursuant to the 1st Lien Credit Agreement (“Revolving Credit Facility”). The funds were borrowed for general corporate purposes due to seasonality in cash flow generation and as a precautionary measure in response to general market conditions. In June 2020, we repaid the Revolving Credit Facility in full and have no outstanding balance on the Revolving Credit Facility as of June 27, 2020. During the six months ended June 27, 2020, the weighted average interest rate was 4.3%. As of June 27, 2020, we had a letter of credit of $4 million issued against the Revolving Credit Facility and $496 million of undrawn capacity under the Revolving Credit Facility. As of June 27, 2020, our commitment fee on the unused portion of the facility was 0.50%.

Debt Covenants and Restrictions

No event of default had occurred under any of our debt obligations as of June 27, 2020. We were not required to make any additional prepayments above the 0.25% per quarter amortization of the 1st Lien Term Loans during the six months ended June 27, 2020.

NOTE 10: INCOME TAX

The tax provisions are largely comprised of withholding tax and non-U.S. income tax. We consider many factors when evaluating and estimating our tax positions, which may require periodic adjustments and may not accurately anticipate actual outcomes. Tax position recognition is a matter of judgment based on the individual facts and circumstances of our position evaluated in light of all available evidence. As of December 28, 2019 and June 27, 2020, we had uncertain tax positions, including interest and penalties, of $27 million and $15 million, respectively, primarily recorded within Other long-term liabilities on the condensed consolidated balance sheets. A portion of income taxes and uncertain tax positions has been indemnified by Intel (Note 5).
During the first quarter of 2020, we concluded an analysis of the impact of recently enacted tax laws on us. As a result, we filed an election to treat one of our non-U.S. subsidiary entities as a corporation for U.S federal income tax purposes retroactively back to the first quarter of 2019. This election resulted in the recognition of an income tax benefit of $10 million in the three months ended March 28, 2020.

NOTE 11: FAIR VALUE OF FINANCIAL INSTRUMENTS AND INTEREST RATE SWAPS

Fair Value of Financial Instruments

For assets and liabilities that are measured using quoted prices in active markets (Level 1), total fair value is the published market price per unit multiplied by the number of units held without consideration of transaction costs, discounts or blockage factors. Assets and liabilities that are measured using significant other observable inputs are valued by reference to similar assets or liabilities (Level 2), adjusted for contract restrictions and other terms specific to that asset or liability. For these items, a significant portion of fair value is derived by reference to quoted prices of similar assets or liabilities in active markets. For all remaining assets and liabilities, fair value is derived using other valuation methodologies, including option pricing models, discounted cash flow models and similar techniques (Level 3) and not based on market exchange, dealer or broker traded transactions. These valuations incorporate certain assumptions and projections in determining the fair value assigned to such assets or liabilities.

The fair value of our financial instruments are as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of December 28, 2019</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial instruments not carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt, gross of discounts and deferred issuance costs (Note 9)</td>
<td>$ —</td>
<td>$(4,817)</td>
<td>$ —</td>
</tr>
<tr>
<td>Financial instruments carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest rate swaps</td>
<td>$ —</td>
<td>$(61)</td>
<td>$ —</td>
</tr>
<tr>
<td>As of June 27, 2020</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial instruments not carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt, gross of discounts and deferred issuance costs (Note 9)</td>
<td>$ —</td>
<td>$(4,676)</td>
<td>$ —</td>
</tr>
<tr>
<td>Financial instruments carried at fair value:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest rate swaps</td>
<td>$ —</td>
<td>$(143)</td>
<td>$ —</td>
</tr>
</tbody>
</table>

The fair value of the debt is based on third party quotations and is therefore classified as Level 2. The fair value of our derivative financial instruments, including interest rate swaps, are valued in the market using discounted cash flow techniques. These techniques incorporate Level 1 and Level 2 fair value measurement inputs such as spot rates, foreign currency exchange rates, and the instrument’s term, notional amount and discount rate.

The fair values of our financial instruments included in Cash and cash equivalents, Accounts receivable, net, Other current assets, Accounts payable and other liabilities and Borrowing under revolving credit facility on the condensed consolidated balance sheets approximate their carrying amounts due to their short maturities. We measure the fair value of money market accounts, included in Cash and cash equivalents on the condensed consolidated balance sheets, on a recurring basis and have classified them as Level 1 because the fair value is measured with quoted prices in active markets. These amounts have been excluded from the table.

There were no transfers of assets or liabilities between fair value measurement levels. Transfers between fair value measurement levels are recognized at the end of the reporting period.
Interest Rate Swaps

We have multiple interest rate swaps in order to fix the LIBOR portion of our USD denominated variable rate borrowings (Note 9). As of June 27, 2020, the outstanding effective arrangements were as follows:

<table>
<thead>
<tr>
<th>Notional Value (in millions)</th>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>Fixed Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$225</td>
<td>January 29, 2018</td>
<td>January 29, 2021</td>
<td>2.33%</td>
</tr>
<tr>
<td>$250</td>
<td>January 29, 2018</td>
<td>January 29, 2022</td>
<td>2.41%</td>
</tr>
<tr>
<td>$275</td>
<td>January 29, 2018</td>
<td>January 29, 2023</td>
<td>2.48%</td>
</tr>
<tr>
<td>$750</td>
<td>March 4, 2020</td>
<td>September 29, 2024</td>
<td>2.07%</td>
</tr>
<tr>
<td>$250</td>
<td>March 29, 2020</td>
<td>March 29, 2024</td>
<td>0.93%</td>
</tr>
<tr>
<td>$225</td>
<td>January 29, 2021</td>
<td>January 29, 2024</td>
<td>0.42%</td>
</tr>
</tbody>
</table>

On March 2, 2020, we cancelled an existing interest rate swap with a notional value of $750 million and accepted an off-market fixed rate on a new interest rate swap to offset the cost of the fair value of the original swap. At the time of the cancellation, the original interest rate swap had a negative fair value of $37 million and was recorded in Accounts payable and other current liabilities and Other long-term liabilities on the condensed consolidated balance sheet. The liability associated with the original interest rate swap was incorporated into the fair value of the new interest rate swap.

The gross amounts of our interest rate swaps, which are subject to master netting arrangements, were as follows:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Gross amounts recognized</th>
<th>Gross amount offset in Balance Sheets</th>
<th>Net amounts presented in Balance Sheets</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of December 28, 2019</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and other current liabilities</td>
<td>$ (19)</td>
<td>$ —</td>
<td>$ (19)</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>(42)</td>
<td>—</td>
<td>(42)</td>
</tr>
<tr>
<td>As of June 27, 2020</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and other current liabilities</td>
<td>(45)</td>
<td>—</td>
<td>(45)</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>(98)</td>
<td>—</td>
<td>(98)</td>
</tr>
</tbody>
</table>

NOTE 12: ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)

Adjustments to Accumulated other comprehensive income (loss), net, are as follow:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Gain (Loss) on Cash Flow Hedges</th>
<th>Pension and Postretirement Benefits Gain (Loss)</th>
<th>Accumulated Other Comprehensive Income (Loss), Net</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of March 30, 2019</td>
<td>$ (22)</td>
<td>$ —</td>
<td>$ (22)</td>
</tr>
<tr>
<td>Other comprehensive income (loss) before reclassifications</td>
<td>(39)</td>
<td>—</td>
<td>(39)</td>
</tr>
<tr>
<td>As of June 29, 2019</td>
<td>$ (61)</td>
<td>$ —</td>
<td>$ (61)</td>
</tr>
<tr>
<td>As of March 28, 2020</td>
<td>$ (136)</td>
<td>$ (1)</td>
<td>$ (137)</td>
</tr>
<tr>
<td>Other comprehensive income (loss) before reclassifications</td>
<td>(17)</td>
<td>—</td>
<td>(17)</td>
</tr>
<tr>
<td>Amounts reclassified from accumulated other comprehensive income (loss)</td>
<td>11</td>
<td>—</td>
<td>11</td>
</tr>
<tr>
<td>As of June 27, 2020</td>
<td>$ (142)</td>
<td>$ (1)</td>
<td>$ (143)</td>
</tr>
</tbody>
</table>
NOTE 13: COMMITMENTS AND CONTINGENCIES

As of June 27, 2020, we have unconditional purchase obligations of $184 million that expire at various dates through 2025 and guarantees of $12 million that expire at various dates through 2028.

We are a party to various legal proceedings that have arisen in the ordinary course of our business. At present, we do not expect that any ordinary course legal proceedings, individually or in the aggregate, will have a material adverse effect on our business, results of operations, financial condition or cash flows.

In the ordinary course of our business, we are subject to examination by taxing authorities for both direct and indirect taxes in many of the domestic and foreign jurisdictions in which we operate. We are unable to make a reasonably reliable estimate as to when or if settlements with taxing authorities may occur. However, we do not anticipate that the resolution of these tax matters or any events related thereto will have a material adverse effect on our business, results of operations, financial condition or cash flows.

NOTE 14: EARNINGS (LOSS) PER UNIT

<table>
<thead>
<tr>
<th>(in millions except per unit data)</th>
<th>Three Months Ended</th>
<th>Six Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 29, 2019</td>
<td>June 27, 2020</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (79)</td>
<td>$ 22</td>
</tr>
<tr>
<td>Weighted average units outstanding - basic</td>
<td>94.1</td>
<td>94.4</td>
</tr>
<tr>
<td>Incremental units attributable to equity awards(1)</td>
<td>—</td>
<td>2.5</td>
</tr>
<tr>
<td>Weighted average units outstanding - diluted</td>
<td>94.1</td>
<td>96.9</td>
</tr>
<tr>
<td>Net income (loss) per unit, basic</td>
<td>$ (0.84)</td>
<td>$ 0.23</td>
</tr>
<tr>
<td>Net income (loss) per unit, diluted</td>
<td>$ (0.84)</td>
<td>$ 0.23</td>
</tr>
</tbody>
</table>

(1) 2.5 million units were excluded from dilution. This consists of RSUs that were excluded from dilution because their effects would have been antidilutive for the three and six months ended June 29, 2019 and unvested MIUs outstanding that share in equity appreciation and future distributions above a return threshold that may impact EPU in future periods.
NOTE 15: PRO FORMA FINANCIAL INFORMATION (UNAUDITED)

Unaudited Pro Forma Tax

Unaudited pro forma financial information has been presented to disclose the pro forma income tax expense and net income attributable to McAfee Corp., the registrant. The unaudited pro forma financial information reflects an adjustment to the provision for income taxes to reflect an effective tax rate of %, which was calculated using the U.S. federal income tax rate and the highest statutory rates applied to income apportioned to each state and local jurisdiction. This tax rate has been applied to the % portion of income before taxes that represents the economic interest in Foundation Technology Worldwide LLC that will be held by McAfee Corp. upon completion of the Reorganization Transactions disclosed in this prospectus, but before application of the proceeds of the offering. In addition, pro forma provision for income taxes includes the historical provision for income taxes of $ related to Foundation Technology Worldwide LLC. The sum of these amounts represents total pro forma provision for income taxes of $.

Unaudited Pro Forma Net Income Per Share

Pro forma basic and diluted net income per share for the six months ended June 27, 2020 has been computed to reflect the number of shares that will be outstanding after the Reorganization Transaction. The unaudited pro forma basic and diluted earnings per share for the six months ended June 27, 2020 does not give effect to the initial public offering and the use of proceeds therefrom. The following table sets forth the computation of the Company’s unaudited pro forma basic and diluted net income per share for the six months ended June 27, 2020:

<table>
<thead>
<tr>
<th>(in millions except share and per share amounts)</th>
<th>Six Months Ended June 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro forma net income per share, basic</td>
<td>$ —</td>
</tr>
<tr>
<td>Pro forma net income per share, diluted</td>
<td>$ —</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of Class A common stock outstanding, basic and diluted</td>
<td>—</td>
</tr>
<tr>
<td>Weighted-average shares outstanding during the period</td>
<td>—</td>
</tr>
<tr>
<td>Shares issued in the offering necessary to pay member distributions</td>
<td>—</td>
</tr>
<tr>
<td>Pro forma weighted-average shares of Class A common stock</td>
<td>—</td>
</tr>
</tbody>
</table>

NOTE 16: SUBSEQUENT EVENTS

Subsequent to June 27, 2020, we declared cash distributions to our Members in the amount of $70 million.

For the six months ended June 27, 2020, subsequent events were evaluated through October 7, 2020, the date the condensed consolidated financial statements were available for reissuance.
Consumer

McAfee protects more than 600 million devices and more than 30 million core subscribers worldwide.

Enterprise

McAfee protects 86% of the Fortune 100 and 78% of the Fortune 500.

McAfee Labs detects 8,600 threats per minute.

McAfee Global Threat Intelligence processes more than 82 billion real-time queries each day.

McAfee holds more than 2,600 issued or pending U.S. and foreign patents.

The MVISION Insights COVID-19 dashboard tracks pandemic-related cyber threats around the world.
ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of common stock being registered. All amounts are estimates except for the SEC registration fee, the FINRA filing fee, and the Exchange listing fee.

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount to be paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC registration fee</td>
<td>$*</td>
</tr>
<tr>
<td>FINRA filing fee</td>
<td>*</td>
</tr>
<tr>
<td>Exchange listing fee</td>
<td>*</td>
</tr>
<tr>
<td>Printing and engraving expenses</td>
<td>*</td>
</tr>
<tr>
<td>Legal fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Accounting fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Transfer agent and registrar fees and expenses</td>
<td>*</td>
</tr>
<tr>
<td>Miscellaneous expenses</td>
<td>*</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$*</td>
</tr>
</tbody>
</table>

* To be completed by amendment.

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145(a) of the DGCL grants each corporation organized thereunder the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.

Section 145(b) of the DGCL grants each corporation organized thereunder the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.
Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders of monetary damages for violations of the director’s fiduciary duty, except (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions), or (iv) for any transaction from which a director derived an improper personal benefit. Our certificate of incorporation includes a provision that eliminates the personal liability of directors for monetary damages for actions taken as a director to the fullest extent authorized by the DGCL.

We have also entered into indemnification agreements with our directors. Such agreements generally provide for indemnification by reason of being our director, as the case may be. These agreements are in addition to the indemnification provided by our certificate of incorporation and bylaws. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, we have been informed that in the opinion of the SEC such indemnification is against public policy and is therefore unenforceable.

The underwriting agreement provides that the underwriters are obligated, under certain circumstances, to indemnify our directors, officers, and controlling persons against certain liabilities, including liabilities under the Securities Act. Please see the form of underwriting agreement filed as Exhibit 1.1 hereto.

Our amended and restated bylaws indemnify the directors and officers to the full extent of the DGCL and also allow the board of directors to indemnify all other employees. Such right of indemnification is not exclusive of any right to which such officer or director may be entitled as a matter of law and shall extend and apply to the estates of deceased officers and directors. Section 145(f) of the DGCL further provides that a right to indemnification or to advancement of expenses arising under a provision of the bylaws shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission which is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

We also maintain a directors’ and officers’ insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses us for those losses for which we have lawfully indemnified the directors and officers. The policy contains various exclusions that are normal and customary for policies of this type. Section 145(g) of the DGCL provides that a corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the corporation would have the power to indemnify such person against such liability under that section.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

In connection with the Sponsor Acquisition, on April 3, 2017, Foundation Technology Worldwide LLC issued and sold in the aggregate 2,900,000,000 Class A Units to our Sponsors and Intel for aggregate consideration of $2,900,000,000 without registration in reliance on the exemption afforded by Section 4(a)(2) of the Securities Act and Rule 506 promulgated thereunder. On April 3, 2017, 700,000,000 Class A Units held by our Sponsors were redeemed in exchange for $700,000,000 of redemption units of Foundation Technology Worldwide LLC. The remaining 2,200,000,000 Class A Units were subsequently reduced to 91,950,000 pursuant to a reverse split of Class A Units. On September 29, 2017, the $700,000,000 of redemption units were redeemed in full and retired for $700,000,000.

Since April 3, 2017, Foundation Technology Worldwide LLC has issued 1,810,923 Class A Units to our employees at an average purchase price of $38.18. These securities were issued without registration in reliance on the exemptions afforded by Section 4(a)(2) of the Securities Act and Rule 701 promulgated thereunder.
### (a) Exhibit Index

<table>
<thead>
<tr>
<th>Exhibit number</th>
<th>Description of exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1*</td>
<td>Form of Underwriting Agreement</td>
</tr>
<tr>
<td>3.1</td>
<td>Form of Amended and Restated Certificate of Incorporation of McAfee Corp.</td>
</tr>
<tr>
<td>3.2</td>
<td>Form of Amended and Restated Bylaws of McAfee Corp.</td>
</tr>
<tr>
<td>4.1*</td>
<td>Form of Class A Common Stock Certificate</td>
</tr>
<tr>
<td>5.1*</td>
<td>Opinion of Ropes &amp; Gray LLP</td>
</tr>
<tr>
<td>10.2</td>
<td>Amendment No. 1 to First Lien Credit Agreement, dated as of January 3, 2018, entered into by and among McAfee, LLC, a Delaware limited liability company, Morgan Stanley Senior Funding, Inc., and the Initial Incremental Term Lenders party thereto</td>
</tr>
<tr>
<td>10.3*</td>
<td>Amendment No. 2 to First Lien Credit Agreement, dated as of November 1, 2018, entered into by and among McAfee, LLC, the Guarantors party thereto, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., and Morgan Stanley Bank, N.A.</td>
</tr>
<tr>
<td>10.4*</td>
<td>Amendment No. 3 to First Lien Credit Agreement, dated as of June 13, 2019, by and among McAfee, LLC, the Guarantors party thereto, the Lenders party thereto, Morgan Stanley Senior Funding, Inc., and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.6</td>
<td>Amendment No. 1 to Second Lien Credit Agreement, dated November 1, 2018, by and among McAfee, LLC, the Guarantors party thereto, the Lenders party thereto, and JPMorgan Chase Bank N.A.</td>
</tr>
<tr>
<td>10.7</td>
<td>Amendment No. 2 to Second Lien Credit Agreement, dated June 13, 2019, by and among McAfee, LLC, the Guarantors party thereto, the Lenders party thereto, and JPMorgan Chase Bank N.A.</td>
</tr>
<tr>
<td>10.8</td>
<td>Office Lease, dated April 10, 2019 between US ER America Center 4, LLC and McAfee, LLC</td>
</tr>
<tr>
<td>10.9*</td>
<td>Form of Amended and Restated Foundation Technology Worldwide LLC, Operating Agreement</td>
</tr>
<tr>
<td>10.10*</td>
<td>Form of Tax Receivable Agreement</td>
</tr>
<tr>
<td>10.11*</td>
<td>Form of Registration Rights Agreement</td>
</tr>
<tr>
<td>10.12*</td>
<td>Form of Stockholders Agreement</td>
</tr>
<tr>
<td>10.13</td>
<td>Employment Agreement, dated as of June 1, 2017, between McAfee Employee Holdings, LLC, Foundation Technology Worldwide LLC and Christopher D. Young</td>
</tr>
<tr>
<td>10.14</td>
<td>Employment Agreement, dated as of January 20, 2020, by and among McAfee, LLC, Foundation Technology Worldwide LLC, and Peter Leav</td>
</tr>
<tr>
<td>10.15</td>
<td>Amendment to Employment Agreement, dated as of September 30, 2020, by and among McAfee, LLC, Foundation Technology Worldwide LLC, McAfee Corp., and Peter Leav</td>
</tr>
</tbody>
</table>
## Table of Contents

<table>
<thead>
<tr>
<th>Exhibit number</th>
<th>Description of exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.16</td>
<td>Employment Agreement, dated as of August 7, 2020, by and among McAfee, LLC, Foundation Technology Worldwide LLC, and Venkat Bhamidipati</td>
</tr>
<tr>
<td>10.17</td>
<td>Amendment to Employment Agreement, dated as of September 30, 2020, by and among McAfee, LLC, Foundation Technology Worldwide LLC, McAfee Corp., and Venkat Bhamidipati</td>
</tr>
<tr>
<td>10.18</td>
<td>Offer Letter, dated as of January 31, 2017, by and between Intel Security and Michael Berry</td>
</tr>
<tr>
<td>10.19</td>
<td>Offer Letter by and between McAfee, Inc. and John Giamatteo</td>
</tr>
<tr>
<td>10.20</td>
<td>Offer Letter, dated as of September 30, 2020, by and between McAfee, LLC and Ashutosh Kulkarni</td>
</tr>
<tr>
<td>10.21</td>
<td>Offer Letter, dated as of September 30, 2020, by and between McAfee, LLC and Terry Hicks</td>
</tr>
<tr>
<td>10.22</td>
<td>Offer Letter, dated as of April 6, 2020, by and between McAfee, LLC and Lynne Doherty McDonald</td>
</tr>
<tr>
<td>10.23</td>
<td>Promotion Letter, dated as of June 11, 2018, by and between McAfee, LLC and with John Giamatteo</td>
</tr>
<tr>
<td>10.24</td>
<td>Separation and General Release Agreement, dated as of January 6, 2020, by and between McAfee, LLC and John Giamatteo</td>
</tr>
<tr>
<td>10.25</td>
<td>Separation Agreement, dated February 3, 2020, by and between McAfee, LLC and Christopher D. Young</td>
</tr>
<tr>
<td>10.26</td>
<td>Form of Severance Agreement for Senior Management</td>
</tr>
<tr>
<td>10.27</td>
<td>McAfee 2017 Management Incentive Plan</td>
</tr>
<tr>
<td>10.28</td>
<td>Form of Management Incentive Unit (MIU) Agreement under the 2017 Plan</td>
</tr>
<tr>
<td>10.29</td>
<td>Form of RSU Agreement under the 2017 Plan</td>
</tr>
<tr>
<td>10.30</td>
<td>McAfee 2020 Omnibus Incentive Plan</td>
</tr>
<tr>
<td>10.31</td>
<td>Form of Stock Option Award Agreement under the 2020 Plan</td>
</tr>
<tr>
<td>10.32</td>
<td>Form of RSU Agreement under the 2020 Plan</td>
</tr>
<tr>
<td>10.33</td>
<td>McAfee Employee Stock Purchase Plan</td>
</tr>
<tr>
<td>10.34</td>
<td>McAfee Executive Cash Incentive Plan</td>
</tr>
<tr>
<td>10.35</td>
<td>Form of Subscription Agreement</td>
</tr>
<tr>
<td>10.36*</td>
<td>Form of Indemnification Agreement</td>
</tr>
<tr>
<td>10.37</td>
<td>McAfee Non-Employee Director Compensation Policy</td>
</tr>
<tr>
<td>10.38</td>
<td>Form of Equity Adjustment Agreement for Senior Management</td>
</tr>
<tr>
<td>21.1**</td>
<td>Subsidiaries of the Registrant</td>
</tr>
<tr>
<td>23.1</td>
<td>Consent of Independent Registered Public Accounting Firm, Ernst &amp; Young LLP</td>
</tr>
<tr>
<td>23.2</td>
<td>Consent of Independent Registered Public Accounting Firm, PricewaterhouseCoopers LLP</td>
</tr>
<tr>
<td>23.3*</td>
<td>Consent of Ropes &amp; Gray LLP (included in Exhibit 5.1)</td>
</tr>
<tr>
<td>24.1**</td>
<td>Power of Attorney (included in the signature pages to this Registration Statement)</td>
</tr>
</tbody>
</table>

* To be filed by amendment.

** Previously Filed

### (b) Financial statement schedules

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.
ITEM 17. UNDERTAKINGS

The undersigned Registrant hereby undertakes:

(1) That for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933 shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) That for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) For the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(4) The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(5) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(6) To provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.
Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of San Jose, State of California, on October 7, 2020.

MCAFEE CORP.

By: /s/ Peter Leav
Name: Peter Leav
Title: President and Chief Executive Officer

* * *

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ Peter Leav</td>
<td>President, Chief Executive Officer, and Director</td>
<td>October 7, 2020</td>
</tr>
<tr>
<td>Peter Leav</td>
<td>(Principal Executive Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ Venkat Bhamidipati</td>
<td>Executive Vice President and Chief Financial Officer</td>
<td>October 7, 2020</td>
</tr>
<tr>
<td>Venkat Bhamidipati</td>
<td>(Principal Financial Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ Christine Kornegay</td>
<td>Vice President and Chief Accounting Officer</td>
<td>October 7, 2020</td>
</tr>
<tr>
<td>Christine Kornegay</td>
<td>(Principal Accounting Officer)</td>
<td></td>
</tr>
<tr>
<td>* Sohaib Abbasi</td>
<td>Director</td>
<td>October 7, 2020</td>
</tr>
<tr>
<td>* Mary Cranston</td>
<td>Director</td>
<td>October 7, 2020</td>
</tr>
<tr>
<td>* Tim Millikin</td>
<td>Director</td>
<td>October 7, 2020</td>
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<td>* Jon Winkelried</td>
<td>Director</td>
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<td>* Kathy Willard</td>
<td>Director</td>
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<td>* Jeff Woolard</td>
<td>Director</td>
<td>October 7, 2020</td>
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<tr>
<td>*By: /s/ Peter Leav</td>
<td>As Attorney-in-Fact</td>
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</tbody>
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McAfee Corp., a Delaware corporation (the “Corporation”), hereby certifies that this Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and that:

A. The name of the Corporation is: McAfee Corp.

B. The original Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on July 19, 2019 under the name Greenseer Holdings Corp. and amended on September 28, 2020, under the name McAfee Corp. (as amended, the “Original Certificate of Incorporation”).

C. This Amended and Restated Certificate of Incorporation amends and restates the Original Certificate of Incorporation of the Corporation.

D. The Certificate of Incorporation, upon the filing of this Amended and Restated Certificate of Incorporation, shall read in full as follows:

ARTICLE I — NAME

The name of the corporation is McAfee Corp. (the “Corporation”).

ARTICLE II — REGISTERED OFFICE AND AGENT

The registered office of the Corporation in the State of Delaware is located at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, county of New Castle. The name of the Corporation’s registered agent at such address is The Corporation Trust Company.

ARTICLE III — PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE IV — CAPITALIZATION

(a) Authorized Shares. The total number of shares of all classes of stock that the Corporation is authorized to issue is [●] shares of stock, consisting of (i) [●] shares of Preferred Stock, par value $0.001 per share (“Preferred Stock”), (ii) [●] shares of Class A Common Stock, par value $0.001 per share (the “Class A Common Stock”), and (iii) [●] shares of Class B Common Stock, par value $0.001 per share (the “Class B Common Stock” and, together with the Class A Common Stock, the “Common Stock”). Upon the filing and effectiveness of this Amended Certificate of Incorporation, all shares of common stock, par value $0.001 per share, of the Corporation issued and outstanding immediately prior to such time shall, automatically, without any further action by the Corporation or any stockholder, be reclassified, in the aggregate, into one fully paid and non-assessable share of Class A Common Stock.

(b) Common Stock.

(i) Voting.

(1) Each holder of shares of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that to the fullest extent permitted by law, holders of shares of Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if only the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.
Except as otherwise required in this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with such holders of Preferred Stock); provided, that the holders of shares of Class A Common Stock and Class B Common Stock as such shall be entitled to vote separately as a class upon any amendment to this Amended and Restated Certificate of Incorporation that would alter or change the powers, preferences or rights of such class of Common Stock so as to affect them adversely. There shall be no cumulative voting.

(ii) Dividends.

(1) Dividends of cash or property may be declared and paid on the Class A Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. Except as otherwise provided by the DGCL or this Amended and Restated Certificate of Incorporation, the holders of record of shares of Class A Common Stock shall share ratably in all dividends payable in cash, stock or otherwise and other distributions, whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise.

(2) Except in connection with Stock Adjustments (as defined below) as provided in Article IV(b)(ii)(3), dividends of cash or property may not be declared or paid on the Class B Common Stock.

(3) In no event will any stock dividend, stock split, reverse stock split, combination of stock, reclassification or recapitalization be declared or made on any class of Common Stock (each, a “Stock Adjustment”) unless a corresponding Stock Adjustment for all other classes of Common Stock at the time outstanding is made in the same proportion and the same manner (unless the holders of shares representing a majority of the voting power of any such other class of Common Stock (voting separately as a single class) waive such requirement in advance and in writing, in which event no such Stock Adjustment need be made for such other class of Common Stock). Stock dividends with respect to each class of Common Stock may only be paid with shares of stock of the same class of Common Stock. Notwithstanding the foregoing, provided that Foundation Technology Worldwide LLC receives the prior written consent required pursuant to Section 4.02(e) of the Second Amended and Restated Limited Liability Company Agreement of Foundation Technology Worldwide LLC (the “LLC Agreement”), the Corporation shall be entitled to declare a stock dividend on the Class A Common Stock without any corresponding adjustment to the Class B Common Stock so long as, after the payment of such stock dividend on the Class A Common Stock, the number of shares of Class A Common Stock outstanding does not exceed the number of LLC Units (as defined below) held by the Corporation and its wholly owned subsidiaries.

(iii) Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock shall be entitled, the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. Without limiting the rights of the holders of Class B Common Stock to exchange LLC Units (as defined below), together with shares of Class A Common Stock, for shares of Class A Common Stock in accordance with the terms of the LLC Agreement (or for the consideration payable in respect of shares of Class A Common Stock in such voluntary or involuntary liquidation, dissolution or winding up), the holders of shares of Class B Common Stock, as such, will not be entitled to receive, with respect to such shares, any assets of the Corporation, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.
(iv) **Cancellation of Shares of Class B Common Stock.** Immediately upon the redemption or exchange of a Class A Unit (each, an “LLC Unit,” and, collectively, the “LLC Units”) of Foundation Technology Worldwide LLC, together with a share of Class B Common Stock, for a share of Class A Common Stock pursuant to the terms of the LLC Agreement, such share of Class B Common Stock shall automatically be canceled with no consideration being paid or issued with respect thereto, pursuant and subject to the terms of the LLC Agreement. Any such canceled shares of Class B Common Stock shall thereafter no longer be outstanding, and all rights with respect to such shares shall automatically cease and terminate.

(v) **Shares Reserved for Issuance.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock such number of shares of Class A Common Stock that shall from time to time be sufficient to effect the redemption or exchange of all outstanding LLC Units (other than such LLC Units owned by the Corporation or any of its wholly owned subsidiaries) together with a commensurate number of Class B Common Stock for Class A Common Stock pursuant to the LLC Agreement; provided, that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of the redemption or exchange of the LLC Units (along with Class B Common Stock) by delivery of purchased shares of Class A Common Stock which are held in the treasury of the Corporation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, and in addition to any other vote required by the DGCL or this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding Class B Common Stock, voting together as a class, shall be required to alter, amend or repeal this Article IV(b)(v) or to adopt any provision inconsistent therewith.

(vi) **No Preemptive Rights.** Holders of Common Stock shall have no preemptive rights to subscribe for any shares of any class of stock of the Corporation whether now or hereafter authorized.

(vii) **No Conversion Rights.** Without limiting the rights of holders of Class B Common Stock and LLC Units as provided in the LLC Agreement, the Common Stock shall not otherwise be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation’s capital stock.

(c) **Preferred Stock.** Shares of Preferred Stock may be issued in one or more series, from time to time, with each such series to consist of such number of shares and to have such voting powers relative to other classes or series of Preferred Stock, if any, or Common Stock, full or limited or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors, and the Board of Directors is hereby expressly vested with the authority, to the full extent now or hereafter provided by applicable law, to adopt any such resolution or resolutions. Except as otherwise provided in this Amended and Restated Certificate of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Amended and Restated Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation. Any shares of Preferred Stock that are redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or this Amended and Restated Certificate of Incorporation. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors.

(d) **No Class Vote on Changes in Authorized Number of Shares of Stock.** Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation, any certificate of designations or any resolution or resolutions providing for the issuance of such series of stock adopted by the Board of Directors, and except as provided in Article IV(b)(v), the number of authorized shares of a class of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL.
(e) Reorganization or Merger.

(i) In the case of any reorganization, Share Exchange (as defined below), consolidation, conversion or merger of the Corporation with or into another person in which shares of Class A Common Stock and Class B Common Stock are converted into (or entitled to receive with respect thereto, including upon an exchange thereof in accordance with the LLC Agreement) shares of stock and/or other securities or property (including, without limitation, cash) or any other transaction having an effect on stockholders substantially similar to that resulting from a reorganization, Share Exchange, consolidation, conversion or merger, each holder of a share of Class A Common Stock shall be entitled to receive with respect to each such share the same kind and amount of shares of stock and other securities and property (including, without limitation, cash), but, without limiting the rights of the holders of shares of Class B Common Stock to exchange their shares of Class B Common Stock (together with the corresponding number of LLC Units) for shares of Class A Common Stock in accordance with the LLC Agreement (or for the consideration payable in respect of shares of Class A Common Stock in such reorganization, Share Exchange, consolidation, conversion or merger), each holder of a share of Class B Common Stock shall only be entitled to receive with respect to each such share (together with each corresponding LLC Unit) a number of shares of stock as it would be entitled to receive had it exchanged its shares of Class B Common Stock (together with the corresponding number of LLC Units) for shares of Class A Common Stock in accordance with the LLC Agreement, and shall not be entitled to receive other securities or property (including, without limitation, cash); and such shares of stock received by a holder of shares of Class B Common Stock shall afford the holder thereof no more rights, privileges or preferences than would be afforded the holders of Class B Common Stock hereunder, including without limitation rights, privileges or preferences with respect to dividends, upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation or in connection with any reorganization, Share Exchange, consolidation, conversion or merger of the Corporation with or into another person or any other transaction having an effect on stockholders substantially similar to that resulting from a reorganization, Share Exchange, consolidation, conversion or merger (each, a “Business Combination Transaction”). Nothing in this Article 4(e) shall be deemed to modify any contractual rights of any affiliates of Intel Americas, Inc. or TPG Global, LLC (collectively, the “Principal Stockholders”). “Share Exchange” means a share exchange involving more than 50% of the shares of the Common Stock, provided a redemption or exchange of shares of Class B Common Stock (together with the corresponding number of LLC Units) for shares of Class A Common Stock effected in accordance with the LLC Agreement shall not constitute a “Share Exchange” for purposes of this Amended and Restated Certificate of Incorporation.

(ii) In connection with any Business Combination Transaction, the Corporation shall not adversely affect, alter, repeal, change or otherwise impair any of the powers, preferences, rights or privileges of the Class A Common Stock (whether directly, by the filing of a certificate of designations, powers, preferences, rights or privileges, by a Business Combination Transaction or otherwise) (i) in a manner that is disproportionate and adverse compared to the manner in which the powers, preferences, rights or privileges of the holders of the Class B Common Stock are affected, altered, repealed, changed or otherwise impaired, including, without limitation (x) any of the voting rights of the holders of the Class A Common Stock in a manner that is disproportionate and adverse compared to the manner in which the voting rights of the holders of the Class B Common Stock are affected, altered, repealed, changed or otherwise impaired, and (y) the requisite vote or percentage required to approve or take any action described in this Article IV, in Article VIII or elsewhere in this Amended and Restated Certificate of Incorporation or described in the bylaws of the Corporation in a manner that is disproportionate and adverse compared to the manner in which the voting rights of the holders of the Class B Common Stock are affected, altered, repealed, changed or otherwise impaired, or (ii) with respect to the economic rights, privileges or preferences of the holders of Class A Common Stock relative to the holders of Class B Common Stock, including, without limitation, with respect to dividends, upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation or in connection with a Business Combination Transaction, without, in each case (i) and (ii), the affirmative vote of the holders of a majority of the shares of Class A Common Stock, voting as a separate class.
ARTICLE V — BOARD OF DIRECTORS

(a) Number of Directors; Vacancies and Newly Created Directorships. The number of directors constituting the Board of Directors shall be not fewer than three (3) and not more than twelve (12), each of whom shall be a natural person. All elections of directors shall be determined by a plurality of the votes cast. Subject to the rights of the holders of any series of Preferred Stock to elect directors, the precise number of directors shall be fixed exclusively pursuant to a resolution adopted by the Board of Directors. Subject to the terms of the Stockholders Agreement (the "Stockholders Agreement"), dated as of [●], by and among the Corporation and the other signatories thereto (so long as such agreement remains in effect), vacancies and newly-created directorships shall be filled exclusively by vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of his or her successor and to his or her earlier death, resignation or removal.

(b) Classified Board of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect directors, the Board of Directors (other than those directors elected by the holders of any series of Preferred Stock) shall be classified with respect to the time for which directors severally hold office into three classes: Class I; Class II; and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of directors constituting the entire Board of Directors and the allocation of directors among the three classes shall be determined by the Board of Directors. The initial Class I Directors shall serve for a term expiring at the first annual meeting of stockholders of the Corporation following the filing of this Amended and Restated Certificate of Incorporation; the initial Class II Directors shall serve for a term expiring at the second annual meeting of stockholders following the filing of this Amended and Restated Certificate of Incorporation; and the initial Class III Directors shall serve for a term expiring at the third annual meeting of stockholders following the filing of this Amended and Restated Certificate of Incorporation. Each director in each class shall hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. At each annual meeting of stockholders beginning with the first annual meeting of stockholders following the filing of this Amended and Restated Certificate of Incorporation, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election, with each director in each such class to hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal.

(c) Removal. Subject to the rights of the holders of any series of Preferred Stock to elect directors, the directors of the Corporation may be removed only for cause; provided, however, any director of the Corporation who is designated for nomination by a Principal Stockholder pursuant to the terms of the Stockholders Agreement may be removed with or without cause by the Principal Stockholder entitled to designate such director for nomination pursuant to the terms of the Stockholders Agreement with the approval of the holders of the majority of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, subject to the terms of the Stockholders Agreement.
ARTICLE VI — LIMITATION OF DIRECTOR LIABILITY

To the fullest extent that the DGCL or any other law of the State of Delaware (as they exist on the date hereof or as they may hereafter be amended) permits the limitation or elimination of the liability of directors, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to, or modification or repeal of, this Article VI shall adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article VI, would accrue or arise, prior to such amendment, modification or repeal. If, after this Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware, the DGCL or such other law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL or such other law, as so amended.

ARTICLE VII — MEETINGS OF STOCKHOLDERS

(a)  No Action by Written Consent. Any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

(b)  Special Meetings of Stockholders. Subject to any rights of the holders of any series of Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by or at the direction of the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

(c)  Election of Directors by Written Ballot. Election of directors need not be by written ballot.

ARTICLE VIII — AMENDMENTS TO THE CERTIFICATE OF INCORPORATION AND BYLAWS

(a)  Bylaws. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to make, alter, amend or repeal the bylaws of the Corporation subject to the power of the stockholders of the Corporation entitled to vote with respect thereto to make, alter, amend or repeal the bylaws of the Corporation and provided that, for so long as a Principal Stockholder has the right to designate a director for nomination to the Board of Directors pursuant to the Stockholders Agreement, the consent of such Principal Stockholder shall be required to make, alter, amend or repeal Sections 1.2(i), 2.4 or 2.5 of the bylaws of the Corporation; provided that with respect to the powers of stockholders entitled to vote with respect thereto to make, alter, amend or repeal the bylaws of the Corporation, in addition to any other vote otherwise required by law, (i) the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote with respect thereto, voting together as a single class, shall be required to make, alter, amend or repeal the bylaws of the Corporation and (ii) for so long as a Principal Stockholder has the right to nominate a director to the Board of Directors pursuant to the Stockholders Agreement, the consent of such Principal Stockholder shall be required to make, alter, amend or repeal Sections 1.2(i), 2.4 or 2.5 of the bylaws of the Corporation.

(b)  Amendments to the Certificate of Incorporation. The Corporation reserves the right to amend, alter, change or repeal (whether directly, by the filing of a certificate of designations, powers, preferences, rights or privileges, by a Business Combination Transaction or otherwise) any provision contained in this Amended and Restated Certificate of Incorporation herein or hereafter prescribed by the DGCL, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, and notwithstanding that a lesser percentage may be permitted from time to time by applicable law, no provision of paragraphs (e) of Article IV, Article V, Article VI, paragraphs (a) and (b) of Article VII, Article VIII, Article IX and Article X may be altered, amended or repealed (whether directly, by the filing of a certificate of designations, powers, preferences, rights or privileges, by a Business Combination Transaction or otherwise) in any respect, nor may any provision or bylaw inconsistent therewith be adopted, unless, in addition to any other vote required by this Amended and Restated Certificate of Incorporation or otherwise required by law, such alteration, amendment, repeal or adoption is approved by: (i) the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, at a meeting of the stockholders called for that purpose and (ii) in the case of any such alteration, amendment or repeal of Article VIII or Article IX, for so long as a Principal Stockholder has the right to designate a director for nomination to the Board of Directors pursuant to the Stockholders Agreement, the consent of such Principal Stockholder.
ARTICLE IX — RENOUNCEMENT OF CORPORATE OPPORTUNITY

(a) **Scope.** The provisions of this Article IX are set forth to define, to the extent permitted by applicable law, the duties of Exempted Persons (as defined below) to the Corporation and, to the extent applicable, to its stockholders, with respect to certain classes or categories of business opportunities. “Exempted Persons” means each of the Principal Stockholders and Thoma Bravo, L.P. and all of their respective Affiliates, partners, principals, directors, officers, members, managers, managing directors and/or employees, including any of the foregoing who serve as employees, officers or directors of the Corporation. Solely for the purposes of this Article IX, reference to “Affiliates” shall have the meaning ascribed to such term in the Stockholders Agreement.

(b) **Competition and Allocation of Corporate Opportunities.** The Exempted Persons shall not have any fiduciary duty or other duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries. To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time available or presented to the Exempted Persons, even if the opportunity is in the line of business of the Corporation or its subsidiaries or is otherwise one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and each such Exempted Person shall have no duty to communicate or offer such business opportunity to the Corporation (and there shall be no restriction on the Exempted Persons using the general knowledge and understanding of the Corporation and the industry in which it operates in considering and pursuing such opportunities or in making investment, voting, monitoring, governance or other decisions relating to other entities or securities) and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries or, to the extent applicable, any of its or their stockholders for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such Exempted Person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries, or uses such knowledge and understanding in the manner described herein.

(c) **Certain Matters Deemed Not Corporate Opportunities.** In addition to and notwithstanding the foregoing provisions of this Article IX, a corporate opportunity shall be deemed not to belong to the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation’s business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

(d) **Amendment of this Article.** No amendment or repeal of this Article IX in accordance with the provisions of paragraph (b) of Article VIII shall apply to or have any effect on the liability or alleged liability of any Exempted Person for or with respect to any activities or opportunities of which such Exempted Person becomes aware prior to such amendment or repeal. This Article IX shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the Corporation’s bylaws or applicable law.

ARTICLE X — EXCLUSIVE JURISDICTION FOR CERTAIN ACTIONS

(a) **Exclusive Forum.** Unless the Board of Directors or one of its committees otherwise approves, in accordance with Section 141 of the DGCL, this Amended and Restated Certificate of Incorporation and the bylaws of the Corporation, the selection of an alternate forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware, or, if the Superior Court of the State of Delaware also does not have jurisdiction, the United States District Court for the District of Delaware) shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or the Corporation’s Amended and Restated Certificate of Incorporation or bylaws, (iv) any action to interpret, apply, enforce or determine the validity of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation or (v) any action asserting a claim against the Corporation governed by the internal affairs doctrine (each, a “Covered Proceeding”); provided that, the provisions of this Article IX(a) will not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction; and
provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware.

(b) **Personal Jurisdiction.** If any action the subject matter of which is a Covered Proceeding is filed in a court other than the Court of Chancery of the State of Delaware, or, where permitted in accordance with paragraph (a) above, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware (each, a “**Foreign Action**”), in the name of any person or entity (a “**Claiming Party**”) without the prior approval of the Board of Directors or one of its committees in the manner described in paragraph (a) above, such Claiming Party shall be deemed to have consented to (i) the personal jurisdiction of the Court of Chancery of the State of Delaware, or, where applicable, the Superior Court of the State of Delaware and the United States District Court for the District of Delaware, in connection with any action brought in any such courts to enforce paragraph (a) above (an “**Enforcement Action**”) and (ii) having service of process made upon such Claiming Party in any such Enforcement Action by service upon such Claiming Party’s counsel in the Foreign Action as agent for such Claiming Party.

(c) **Federal Forum.** Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

(d) **Notice and Consent.** Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article X and waived any defense of personal jurisdiction and argument relating to the inconvenience of the forums referenced above in connection with any Covered Proceeding.

**ARTICLE XI — SEVERABILITY**

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Certificate of Incorporation to be executed by the officer below this day of .

McAFEE CORP.

By: ________________________________
   Name: ________________________________
   Title: ________________________________

[Signature Page to Amended and Restated Certificate of Incorporation]
AMENDED AND RESTATED BYLAWS
OF
McAFEE CORP.
SECTION 1
STOCKHOLDERS

Section 1.1 Annual Meeting.

An annual meeting of the stockholders of McAfee Corp., a Delaware corporation (the “Corporation”), for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting shall be held at the place, if any, within or without the State of Delaware, on the date and at the time that the Board of Directors of the Corporation (the “Board of Directors”) shall each year fix. Unless stated otherwise in the notice of the annual meeting of the stockholders of the Corporation, such annual meeting shall be at the principal office of the Corporation. The Board of Directors may, in its sole discretion, determine that any meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by Section 211 of the General Corporation Law of the State of Delaware (the “DGCL”).

Section 1.2 Advance Notice of Nominations and Proposals of Business.

(a) Nominations of persons for election to the Board of Directors and proposals for other business to be transacted by the stockholders at an annual meeting of stockholders may be made (i) pursuant to the Corporation’s notice with respect to such meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or any committee thereof or (iii) by any stockholder of record of the Corporation who (A) was a stockholder of record at the time of the giving of the notice contemplated in Section 1.2(b), (B) is entitled to vote at such meeting and (C) has complied with the notice procedures set forth in this Section 1.2. Subject to Section 1.2(i) and except as otherwise required by law, clause (iii) of this Section 1.2(a) shall be the exclusive means for a stockholder to make nominations or propose other business (other than nominations and proposals properly brought pursuant to applicable provisions of federal law, including the Securities Exchange Act of 1934 (as amended from time to time, the “Exchange Act”) and the rules and regulations of the Securities and Exchange Commission thereunder), before an annual meeting of stockholders.

(b) Except as otherwise required by law, for nominations or proposals to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 1.2(a), (i) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation with the information contemplated by Section 1.2(c) including, where applicable, delivery to the Corporation of timely and completed questionnaires as contemplated by Section 1.2(c), and (ii) the business must be a proper matter for stockholder action under the DGCL. The notice requirements of this Section 1.2 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has timely notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder’s proposal has been included in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting.

(c) To be timely for purposes of Section 1.2(b), a stockholder’s notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation on a date (i) not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the anniversary date of the prior year’s annual meeting or (ii) if there was no annual meeting in the prior year or if the date of the current year’s annual meeting is more than thirty (30) days before or after the anniversary date of the prior year’s annual meeting, on or before ten (10) days after the day on which the date of the current year’s annual meeting is first disclosed in a public announcement. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the delivery of such notice. Notice from a stockholder must state (i) as to each nominee that the stockholder proposes for election or reelection as a director, (A) all information relating to such nominee that would be required to be disclosed in solicitations of proxies for the election of such nominee as a director pursuant to Regulation 14A under the Exchange Act and such nominee’s written consent to serve as a director if elected, and (B) a description of all direct and indirect compensation and other material monetary arrangements, agreements or understandings
during the past three years, and any other material relationship, if any, between or concerning such stockholder, any Stockholder Associated Person (as defined below) or any of their respective affiliates or associates, on the one hand, and the proposed nominee or any of his or her affiliates or associates, on the other hand; (ii) as to each proposal that the stockholder seeks to bring before the meeting, a brief description of such proposal, the reasons for making the proposal at the meeting, the text of the proposal (including the text of any resolutions proposed for consideration and in the event that it includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment) and any material interest that the stockholder has in the proposal; and (iii) (A) the name and address of the stockholder giving the notice and the Stockholder Associated Persons, if any, on whose behalf the nomination or proposal is made, (B) the class (and, if applicable, series) and number of shares of stock of the Corporation that are, directly or indirectly, owned beneficially or of record by the stockholder or any Stockholder Associated Person, (C) any option, warrant, convertible security, stock appreciation right or similar instrument, right, agreement, arrangement or understanding with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class (or, if applicable, series) of shares of stock of the Corporation or with a value derived in whole or in part from the value of any class (or, if applicable, series) of shares of stock of the Corporation, whether or not such instrument, right, agreement, arrangement or understanding shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of stock of the Corporation of the stockholder or any Stockholder Associated Person (each, a "Derivative Instrument") directly or indirectly owned beneficially or of record by such stockholder or any Stockholder Associated Person, (D) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any securities of the Corporation, (E) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or beneficially owns, directly or indirectly, an interest in a general partner, (F) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of the shares of stock of the Corporation or Derivative Instruments, (G) any other information relating to such stockholder or any Stockholder Associated Person, if any, required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations of the Securities and Exchange Commission thereunder, (H) a representation that the stockholder is a holder of record of the Corporation entitled to vote at such meeting, intends to appear in person or by proxy at the meeting to propose such business or nomination and has complied with the provisions of this Section 1.2(c), (I) a certification as to whether or not the stockholder and all Stockholder Associated Persons, have complied with all applicable federal, state and other legal requirements in connection with the stockholder’s and each Stockholder Associated Person’s acquisition of shares of capital stock or other securities of the Corporation and the stockholder’s and each Stockholder Associated Person’s acts or omissions as a stockholder (or beneficial owner of securities) of the Corporation, and (J) whether the stockholder intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation’s voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation’s voting shares reasonably believed by such stockholder to be sufficient to elect such nominee or nominees or otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination. For purposes of these bylaws, a “Stockholder Associated Person” of any stockholder means (i) any “affiliate” or “associate” (as those terms are defined in Rule 12b-2 under the Exchange Act) of such stockholder, (ii) any beneficial owner of any capital stock or other securities of the Corporation owned of record or beneficially by such stockholder, (iii) any person directly or indirectly controlling, controlled by or under common control with any such Stockholder Associated Person referred to in clause (i) or (ii) above, and (iv) any person acting in concert in respect of any matter involving the Corporation or its securities with either such stockholder or any beneficial owner of any capital stock or other securities of the Corporation owned of record or beneficially by such stockholder. In addition, in order for a nomination to be properly brought before an annual or special meeting by a stockholder pursuant to clause (iii) of Section 1.2(a), any nominee proposed by a stockholder shall complete a questionnaire, in a form provided by the Corporation, and deliver a signed copy of such completed questionnaire to the Corporation within ten (10) days of the date that the Corporation makes available to the stockholder seeking to make such nomination or such nominee the form of such questionnaire. The Corporation may require any proposed nominee to furnish such other information as may be reasonably requested by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of the nominee. The information required to be
included in a notice pursuant to this Section 1.2(c) shall be provided as of the date of such notice and shall be supplemented by the stockholder not later than ten (10) days after the record date for the determination of stockholders entitled to notice of the meeting to disclose any changes to such information as of the record date. The information required to be included in a notice pursuant to this Section 1.2(c) shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by this Section 1.2(c) on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(d) Subject to the certificate of incorporation of the Corporation (the “Certificate of Incorporation”), Section 1.2(i) and applicable law, only a person nominated in accordance with the procedures stated in this Section 1.2 shall be eligible for election as and to serve as a member of the Board of Directors and the only business that shall be conducted at an annual meeting of stockholders is the business that has been brought before the meeting in accordance with the procedures set forth in this Section 1.2. The chairperson of the meeting shall have the power and the duty to determine whether a nomination or any proposal has been made according to the procedures stated in this Section 1.2 and, if any nomination or proposal does not comply with this Section 1.2, unless otherwise required by law, the nomination or proposal shall be disregarded.

(e) For purposes of this Section 1.2, “public announcement” means disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(f) For purposes of these bylaws, “beneficial ownership” shall be determined in accordance with Rule 13d-3 promulgated under the Exchange Act.

(g) Notwithstanding the foregoing provisions of this Section 1.2, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 1.2. Nothing in this Section 1.2 shall affect any rights, if any, of stockholders to request inclusion of nominations or proposals in the Corporation’s proxy statement pursuant to applicable provisions of federal law, including the Exchange Act.

(h) Notwithstanding the foregoing provisions of this Section 1.2, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business or does not provide the information required by Section 1.2(c), including any required supplement thereto, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.2, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(i) All provisions of this Section 1.2 are subject to, and nothing in this Section 1.2 shall in any way limit the exercise, or the method or timing of the exercise of, the rights of any person granted by the Corporation to nominate directors, including such rights granted by the terms of the Stockholders Agreement (the “Stockholders Agreement”), dated as of [●], 2020, by and among the Corporation and the other signatories thereto (so long as such agreement remains in effect), which rights may be exercised without compliance with the provisions of this Section 1.2.

Section 1.3 Special Meetings; Notice.

Special meetings of the stockholders of the Corporation may be called only to the extent and in the manner set forth in the Certificate of Incorporation. Notice of every special meeting of the stockholders of the Corporation shall state the purpose or purposes of such meeting. Except as otherwise required by law, the business conducted at a special meeting of stockholders of the Corporation shall be limited exclusively to the business set forth in the Corporation’s notice of meeting, and the individual or group calling such meeting shall have exclusive authority to determine the business included in such notice.
Section 1.4 Notice of Meetings.

Notice of the place, if any, date and time of all meetings of stockholders of the Corporation, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present and vote at such meeting, and, in the case of all special meetings of stockholders, the purpose or purposes of the meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which such meeting is to be held (unless a different time is specified by law), to each stockholder entitled to notice of the meeting.

The Corporation may postpone or cancel any previously called annual or special meeting of stockholders of the Corporation by making a public announcement (as defined in Section 1.2(e)) of such postponement or cancellation prior to the meeting. When a previously called annual or special meeting is postponed to another time, date or place, if any, notice of the place (if any), date and time of the postponed meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present and vote at such postponed meeting, shall be given in conformity with this Section 1.4 unless such meeting is postponed to a date that is not more than sixty (60) days after the date that the initial notice of the meeting was provided in conformity with this Section 1.4.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting, or if after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in conformity herewith and such notice shall be given to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting. At any adjourned meeting, any business may be transacted that may have been transacted at the original meeting.

Section 1.5 Quorum.

At any meeting of the stockholders, the holders of shares of stock of the Corporation entitled to cast a majority of the total votes entitled to be cast by the holders of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number is required by applicable law or the Certificate of Incorporation. If a separate vote by one or more classes or series is required, the holders of shares entitled to cast a majority of the total votes entitled to be cast by the holders of the shares of the class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. A quorum, once established, shall not be broken by the subsequent withdrawal of enough votes to leave less than a quorum.

If a quorum shall fail to attend any meeting, the chairperson of the meeting may adjourn the meeting to another place, if any, date and time. At any such adjourned meeting at which there is a quorum, any business may be transacted that might have been transacted at the meeting originally called.

Section 1.6 Organization.

The Chairperson of the Board of Directors or, in his or her absence, the person whom the Board of Directors designates or, in the absence of that person or the failure of the Board of Directors to designate a person, the Chief Executive Officer of the Corporation or, in his or her absence, the person chosen by the holders of a majority of the shares of capital stock entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders of the Corporation and act as chairperson of the meeting. In the absence of the Secretary, the secretary of the meeting shall be the person the chairperson appoints.
Section 1.7 Conduct of Business.

The chairperson of any meeting of stockholders of the Corporation shall determine the order of business and the rules of procedure for the conduct of such meeting, including the manner of voting and the conduct of discussion as he or she determines to be in order. The chairperson shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairperson of the meeting shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairperson of the meeting, may include the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The chairperson of the meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a nomination or matter of business was not properly brought before the meeting and if such chairperson should so determine, such chairperson shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.8 Proxies; Inspectors.

(a) At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by applicable law, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

(b) Prior to a meeting of the stockholders of the Corporation, the Corporation shall appoint one or more inspectors, who may be employees of the Corporation, to act at a meeting of stockholders of the Corporation and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. No inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by applicable law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before beginning the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of inspectors. The inspectors shall have the duties prescribed by applicable law. Unless otherwise provided by the Board of Directors, the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies, votes or any revocation thereof or change thereto shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election.

Section 1.9 Voting.

Except as otherwise required by applicable law or the Certificate of Incorporation, all matters other than the election of directors shall be determined by a majority of the votes cast on the matter affirmatively or negatively. All elections of directors shall be determined in the manner provided in the Certificate of Incorporation.
Section 1.10 Stock List.

A complete list of stockholders of the Corporation entitled to vote at any meeting of stockholders of the Corporation, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder, shall be open to the examination of any such stockholder, for any purpose germane to a meeting of the stockholders of the Corporation, for a period of at least ten (10) days before the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (b) during ordinary business hours at the principal place of business of the Corporation; provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before such meeting date. The stock list shall also be open to the examination of any such stockholder during the entire meeting. The Corporation may look to this list as the sole evidence of the identity of the stockholders entitled to vote at a meeting and the number of shares held by each stockholder.

SECTION 2

BOARD OF DIRECTORS

Section 2.1 General Powers and Qualifications of Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these bylaws expressly confer upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by the DGCL or by the Certificate of Incorporation or by these bylaws required to be exercised or done by the stockholders. Directors need not be stockholders of the Corporation to be qualified for election or service as a director of the Corporation.

Section 2.2 Removal; Resignation.

The directors of the Corporation may be removed in accordance with the Certificate of Incorporation and the DGCL. Any director may resign at any time upon notice given in writing, including by electronic transmission, to the Corporation.

Section 2.3 Regular Meetings.

Regular meetings of the Board of Directors shall be held at the place (if any), on the date and at the time as shall have been established by the Board of Directors and publicized among all directors. A notice of a regular meeting, the date of which has been so publicized, shall not be required.

Section 2.4 Special Meetings.

Special meetings of the Board of Directors may be called by (a) the Chairperson or Vice Chairperson of the Board of Directors, (b) the Chief Executive Officer of the Corporation, (c) two or more directors then in office or (d) for so long as TPG or Intel (each as defined below) has a contractual right to designate for nomination at least one (1) director of the Corporation, any such director designated by TPG or Intel, as applicable, and shall be held at the place, if any, on the date and at the time as he, she or they shall fix. Notice of the place, if any, date and time of each special meeting shall be given to each director either (a) by mailing written notice thereof not less than five (5) days before the meeting, or (b) by telephone, facsimile or other means of electronic transmission providing notice thereof not less than twenty-four (24) hours before the meeting. Unless otherwise stated in the notice thereof, any and all business may be transacted at a special meeting of the Board of Directors.

Section 2.5 Quorum.

At any meeting of the Board of Directors, a majority of the total number of directors then in office shall constitute a quorum for all purposes; provided, however, that (i) for so long as affiliates of TPG Global, LLC (“TPG”) have a contractual right to designate for nomination at least one (1) director of the Corporation, unless such right shall have been waived by TPG, a quorum of the Board of Directors shall require at least one (1) director designated by TPG and (ii) for so long as affiliates of Intel Americas, Inc. (“Intel”) have a contractual right to designate at least one (1) director of the Corporation, unless such right shall have been waived by Intel, a quorum of the Board of Directors shall require at least one (1) director designated by Intel; provided further, however, that if a meeting of the Board of Directors called in accordance with these bylaws fails to achieve a quorum solely due to the
absence of any director designated by TPG or Intel, as the case may be, then any director or officer of the Corporation may send a new notice of meeting of the Board of Directors, notwithstanding the timing requirements provided for in the second sentence of Section 2.4, not less than three (3) business days before the first successive meeting at which only the topics noticed in the adjourned meeting will be covered in accordance with these bylaws, and at such succeeding meeting of the Board of Directors if quorum is failed to be achieved again solely due to the absence of any director designated by the same party, TPG or Intel, as the case may be, as at the first successive meeting, then any director or officer of the Corporation may send a new notice of meeting of the Board of Directors, notwithstanding the timing requirements provided for in the second sentence of Section 2.4, not less than three (3) business days before the second successive meeting at which only the topics noticed in the adjourned meeting will be covered in accordance with these bylaws and a quorum at such second successive meeting shall be a majority of the total number of directors then in office and shall not specifically require the presence of (A) in the event that the two preceding meetings of the Board of Directors at which only the same topics were to be covered failed to achieve a quorum solely due to the absence of a director designated by TPG, a director designated by TPG or (B) in the event that the two preceding meetings of the Board of Directors at which only the same topics were to be covered failed to achieve a quorum solely due to the absence of a director designated by Intel, a director designated by Intel. If a quorum shall fail to be present at any meeting, a majority of those present may adjourn the meeting to another place, if any, date or time, without further notice or waiver thereof.

Section 2.6 Participation in Meetings by Conference Telephone or Other Communications Equipment.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of the Board of Directors or committee thereof by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other director, and such participation shall constitute presence in person at the meeting.

Section 2.7 Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in the order and manner that the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, provided a quorum is present at the time such matter is acted upon, except as otherwise provided in the Certificate of Incorporation or these bylaws or required by applicable law. The Board of Directors or any committee thereof may take action without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings, or electronic transmission or electronic transmissions, are filed with the minutes of proceedings of the Board of Directors or any committee thereof. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.8 Compensation of Directors.

The Board of Directors shall be authorized to fix the compensation of directors. The directors of the Corporation shall be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be reimbursed a fixed sum for attendance at each meeting of the Board of Directors, paid an annual retainer or paid other compensation, including equity compensation, as the Board of Directors determines. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees shall have their expenses, if any, of attendance of each meeting of such committee reimbursed and may be paid compensation for attending committee meetings or being a member of a committee.

SECTION 3

COMMITTEES

The Board of Directors may designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees, appoint a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of such committee. All provisions of this Section 3 are subject to, and nothing in this Section 3 shall in any way limit the exercise, or method or timing of the exercise of, the rights of any person granted by the Corporation with respect to the existence, duties, composition or conduct of any committee of the Board of Directors, including those rights granted pursuant to the Stockholders Agreement.
SECTION 4

OFFICERS

Section 4.1  Generally.

The officers of the Corporation may consist of a Chief Executive Officer, a President, a Secretary, a Treasurer, a Chief Financial Officer, and such other officers as the Board of Directors may from time to time determine, each to have such authority, functions or duties as set forth in these bylaws or as determined by the Board of Directors. Each officer shall hold office for such term as may be prescribed by the Board of Directors or until such person’s successor shall have been duly chosen and qualified or until such person’s earlier death, disqualification, resignation or removal. Any number of offices may be held by the same person. The compensation of officers shall be determined from time to time by the Board of Directors or a committee thereof or by such officers as may be designated by resolution of the Board of Directors.

Section 4.2  Chief Executive Officer and President.

Unless otherwise determined by the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. Subject to the provisions of these bylaws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers that are commonly incident to the office of chief executive or which are delegated to him or her by the Board of Directors. He or she shall have the power to sign all stock certificates, contracts and other instruments of the Corporation that are authorized and, unless otherwise determined by the Board of Directors, shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

Section 4.3  Secretary.

The powers and duties of the Secretary are: (a) to act as secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose, unless a different secretary is designated at the meeting; (b) to see that all notices required to be given by the Corporation are duly given and served; (c) to act as custodian of the seal of the Corporation and, in his or her discretion, affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these bylaws; (d) to have charge of the books and records of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (e) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.4  Chief Financial Officer and Treasurer.

The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine. The Chief Executive Officer may direct the Treasurer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors the Chief Executive Officer, or the Chief Financial Officer shall designate from time to time.

Section 4.5  Delegation of Authority.

The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

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Section 4.6  Removal.

The Board of Directors may remove any officer of the Corporation at any time, with or without cause, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon written notice to the Secretary or, if there is no Secretary, to the Board of Directors, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly chosen and qualified.

Section 4.7  Action with Respect to Securities of Other Companies.

To the extent authorized by the Board of Directors, the Chief Executive Officer, or any officer of the Corporation authorized by the Chief Executive Officer, shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders or equityholders of, or with respect to any action of, stockholders or equityholders of any other entity in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other entity.

SECTION 5

STOCK

Section 5.1  Certificates of Stock.

Shares of the capital stock of the Corporation may be certificated or uncertificated, as provided in the DGCL. Stock certificates shall be signed by, or in the name of the Corporation by, any two authorized officers of the Corporation, certifying the number of shares owned by such stockholder. Any signatures on a certificate may be by facsimile. Although any officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still such at the date of its issue.

Section 5.2  Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation (within or without the State of Delaware) or by transfer agents designated to transfer shares of the stock of the Corporation.

Section 5.3  Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to regulations as the Board of Directors may establish concerning proof of the loss, theft or destruction and concerning the giving of a satisfactory bond or indemnity.

Section 5.4  Regulations.

The issue, transfer, conversion and registration of certificates of stock of the Corporation shall be governed by other regulations as the Board of Directors may establish.

Section 5.5  Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day preceding the day on which notice is given, or, if notice is waived, at the close of business on the day preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any postponement or adjournment of the meeting; provided, however, that the Board of
Directors may fix a new record date for determination of stockholders entitled to vote at the postponed or adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such postponed or adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the postponed or adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 6

INDEMNIFICATION

Section 6.1 Indemnification.

The Corporation shall indemnify, defend and hold harmless, to the fullest extent permitted by the DGCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), any person who was or is made, or is threatened to be made, a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director of the Corporation or an officer of the Corporation elected by the Board of Directors in a duly adopted resolution of the Board of Directors (each, and "Officer") or, while a director of the Corporation or an Officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, member, trustee or agent of another corporation or of a partnership, joint venture, trust, nonprofit entity or other enterprise (including service with respect to employee benefit plans) (any such entity, an "Other Entity") (each such person, an "Indemnitee"), against all expense, liability and loss suffered (including, but not limited to, expenses (including attorneys’ fees and expenses), judgments, fines, ERISA excise tax and penalties, and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding) by such Indemnitee in connection with such Proceeding.

Notwithstanding the preceding sentence, the Corporation shall be required to indemnify an Indemnitee in connection with a Proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such Proceeding (or part thereof) by the Indemnitee was authorized by the Board of Directors or the Proceeding (or part thereof) relates to the enforcement of the Corporation’s obligations under this Section 6.1.

Section 6.2 Advancement of Expenses.

The Corporation shall to the fullest extent not prohibited by applicable law pay, on an as-incurred basis, all expenses (including attorneys’ fees and expenses) actually and reasonably incurred by an Indemnitee in defending any proceeding, which may be indemnifiable pursuant to this Section 6, in advance of its final disposition. Such advancement shall be unconditional, unsecured and interest free and shall be made without regard to Indemnitee’s ability to repay any expenses advanced; provided, however, that, to the extent required by the DGCL, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an unsecured undertaking by the Indemnitee to repay all amounts advanced if it should be ultimately determined that the Indemnitee is not entitled to be indemnified under this Section 6 or otherwise.

Section 6.3 Claims.

If a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under this Section 6 is not paid in full within sixty (60) days after a written claim therefor by the Indemnitee has been received by the Corporation, the Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the Indemnitee is not entitled to the requested indemnification or advancement of expenses under applicable law.
Section 6.4 Insurance.

The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, trustee, employee, member or agent of the Corporation, or was serving at the request of the Corporation as a director, officer, trustee, employee, member or agent of an Other Entity, against any liability asserted against the person and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Section 6 or the DGCL.

Section 6.5 Non-Exclusivity of Rights; Other Indemnification.

The rights conferred on any Indemnitee by this Section 6 are not exclusive of other rights arising under any bylaw, agreement, vote of directors or stockholders or otherwise, and shall inure to the benefit of the heirs and legal representatives of such Indemnitee. This Section 6 shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to Indemnitees or persons other than Indemnitees when and as authorized by appropriate corporate action, including by separate agreement with the Corporation.

Section 6.6 Amounts Received from an Other Entity.

Subject to any written agreement between the Indemnitee and the Corporation to the contrary, the Corporation’s obligation, if any, to indemnify or to advance expenses to any Indemnitee who was or is serving at the Corporation’s request as a director, officer, employee, member, trustee or agent of an Other Entity shall be reduced by any amount such Indemnitee may collect as indemnification or advancement of expenses from such Other Entity.

Section 6.7 Amendment or Repeal.

The provisions of this Section 6 shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as an Indemnitee (whether before or after the adoption of these bylaws), in consideration of such person’s performance of such services, and pursuant to this Section 6, the Corporation intends to be legally bound to each such current or former Indemnitee. With respect to current and former Indemnitees, the rights conferred under this Section 6 are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these bylaws. With respect to any Indemnitee who commences service following adoption of these bylaws, the rights conferred under this Section 6 shall be present contractual rights, and such rights shall fully vest, and be deemed to have vested fully, immediately upon such Indemnitee’s service in the capacity which is subject to the benefits of this Section 6. Any right to indemnification or to advancement of expenses of any Indemnitee arising hereunder shall not be eliminated or impaired by an amendment to or repeal of this Section 6 after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit, proceeding or other matter for which indemnification or advancement of expenses is sought.

Section 6.8 Reliance.

Indemnitees who after the date of the adoption of this Section 6 become or remain an Indemnitee described in Section 6.1 will be conclusively presumed to have relied on the rights to indemnity, advancement of expenses and other rights contained in this Section 6 in entering into or continuing the service. The rights to indemnification and to the advancement of expenses conferred in this Section 6 will apply to claims made against any Indemnitee described in Section 6.1 arising out of acts or omissions that occurred or occur either before or after the adoption of this Section 6 in respect of service as a director or officer of the Corporation or other service described in Section 6.1.

Section 6.9 Successful Defense.

In the event that any proceeding to which an Indemnitee is a party is resolved in any manner other than by adverse judgment against the Indemnitee (including settlement of such proceeding with or without payment of money or other consideration) it shall be presumed that the Indemnitee has been successful on the merits or otherwise in such proceeding for purposes of Section 145(c) of the DGCL. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.
Section 6.10 **Merger or Consolidation.**

For purposes of this Section 6, references to the “Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Section 6 with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 6.11 **Continuation of Indemnification.**

The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Section 6 shall continue notwithstanding that the person has ceased to be an Indemnitee and shall inure to the benefit of his or her estate, heirs, executors, administrators, legatees and distributees; provided, however, that the Corporation shall indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 6.12 **Indemnification Contracts.**

The Board of Directors is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification rights to such person. Such rights may be greater than those provided in this Section 6.

Section 6.13 **Savings Clause.**

If this Section 6 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and advance expenses to each person entitled to indemnification under Section 6.1 to the fullest extent permitted by any applicable portion of this Section 6 that shall not have been invalidated and to the fullest extent permitted by applicable law.

**SECTION 7**

**NOTICES**

Section 7.1 **Notices.**

Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the Corporation. If mailed, notice to a stockholder of the Corporation shall be deemed given when deposited in the mail, postage prepaid, directed to a stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders of the Corporation may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 7.2 **Waivers.**

A written waiver of any notice, signed by a stockholder or director, or a waiver by electronic transmission by such person or entity, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person or entity. Neither the business nor the purpose of any meeting need be specified in the waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.
SECTION 8

MISCELLANEOUS

Section 8.1 Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors, duplicates of the seal may be kept and used by the Treasurer or the Chief Financial Officer.

Section 8.2 Reliance upon Books, Reports, and Records.

Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books and records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers, agents or employees, or committees of the Board of Directors so designated, or by any other person or entity as to matters which such director or committee member reasonably believes are within such other person’s or entity’s professional or expert competence and that has been selected with reasonable care by or on behalf of the Corporation.

Section 8.3 Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 8.4 Time Periods.

In applying any provision of these bylaws that requires that an act be done or not be done a specified number of days before an event or that an act be done during a specified number of days before an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

SECTION 9

AMENDMENTS

These bylaws may be altered, amended or repealed in accordance with the Certificate of Incorporation and the DGCL.

SECTION 10

SEVERABILITY

If any provision or provisions of these bylaws shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of these bylaws (including each portion of any paragraph of these bylaws containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of these bylaws (including each such portion of any paragraph of these bylaws containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.
FIRST LIEN CREDIT AGREEMENT

Dated as of September 29, 2017

among

MCAFEE, LLC,
as the Borrower,

MCAFEE FINANCE 2, LLC,
as Holdings,

MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent, Collateral Agent and Issuing Bank,

and

THE OTHER LENDERS PARTY HERETO

Morgan Stanley Senior Funding, Inc.,
JPMorgan Chase Bank N.A.,
Goldman Sachs Bank USA,
Merrill Lynch, Pierce, Fenner & Smith Incorporated,
Barclays Bank PLC,
Citigroup Global Markets Inc.,
Deutsche Bank Securities Inc.,
RBC Capital Markets¹,
UBS Securities LLC, and
Mizuho Bank, Ltd.,
as Joint Lead Arrangers and Joint Lead Bookrunners

¹ RBC Capital Markets is a brand name for the capital markets businesses of Royal Bank of Canada and its affiliates.
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FIRST LIEN CREDIT AGREEMENT

This FIRST LIEN CREDIT AGREEMENT (this “Agreement”) is entered into as of September 29, 2017 by and among McAfee, LLC, a Delaware limited liability company (the “Borrower”), McAfee Finance 2, LLC, a Delaware limited liability company, as Holdings, Morgan Stanley Senior Funding, Inc., as administrative agent (in such capacity, including any successor thereto, the “Administrative Agent”) under the Loan Documents, as collateral agent (in such capacity, including any successor thereto, the “Collateral Agent”) under the Loan Documents and as an Issuing Bank, and each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”).

PRELIMINARY STATEMENTS

The Borrower has requested that (a) the Lenders extend credit to the Borrower in the form of $2,555.0 million of Closing Date USD Term Loans, €507.0 million of Closing Date Euro Term Loans and $500.0 million of Revolving Commitments on the Closing Date as first lien secured credit facilities and (b) from time to time on and after the Closing Date, the Lenders lend to the Borrower and the Issuing Banks issue Letters of Credit for the account of the Borrower, each to provide working capital for, and for other general corporate purposes of, the Borrower and its Subsidiaries, pursuant to the Revolving Commitments hereunder and pursuant to the terms of, and subject to the conditions set forth in, this Agreement.

On the Closing Date, the Borrower will enter into the Second Lien Credit Agreement pursuant to which the Borrower will obtain $600.0 million in initial aggregate principal amount of second lien term loans (the “Second Lien Initial Term Loans”).

The proceeds of the Closing Date Term Loans and the Closing Date Revolving Borrowings, together with the proceeds of the Second Lien Initial Term Loans and cash on hand, will be used on the Closing Date to fund the Transactions.

The applicable Lenders have indicated their willingness to lend, and the applicable Issuing Banks have indicated their willingness to issue Letters of Credit, in each case on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

Article I

Definitions and Accounting Terms

SECTION 1.01 Defined Terms. As used in this Agreement (including the introductory paragraph hereof and the preliminary statements hereto), the following terms have the meanings set forth below:

“Acceptable Discount” has the meaning specified in Section 2.05(1)(e)(D)(2).

“Acceptable Non-USD Currency” means (i) Sterling and Euros and (ii) subject to the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned) and each Lender under the applicable Revolving Facility, any other currency.
“Acceptable Prepayment Amount” has the meaning specified in Section 2.05(1)(e)(D)(3).

“Acceptance and Prepayment Notice” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit M.

“Acceptance Date” has the meaning specified in Section 2.05(1)(e)(D)(2).

“Acquired Indebtedness” means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Additional Lender” means, at any time, any bank, other financial institution or institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Loan in accordance with Section 2.14, (b) Other Loans pursuant to a Refinancing Amendment in accordance with Section 2.15 or (c) Replacement Loans pursuant to Section 10.01; provided that each Additional Lender shall be subject to the approval of the Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed, in each case solely to the extent that any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B) for an assignment of Loans to such Additional Lender, and in the case of Incremental Revolving Commitments and Other Revolving Commitments and the Issuing Bank, such approval not to be unreasonably withheld, conditioned or delayed, in each case solely to the extent such consent would be required for any assignment to such Additional Lender under Section 10.07(b)(iii).

“Administrative Agent” has the meaning specified in the introductory paragraph to this Agreement.

“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 the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Affiliate Transaction” has the meaning specified in Section 7.07.
“Affiliated Lender” means, at any time, any Lender that is an Investor or an Affiliate of an Investor (other than (a) Holdings, the Borrower or any Subsidiary, (b) any Debt Fund Affiliate or (c) any natural person) at such time.

“Affiliated Lender Assignment and Assumption” has the meaning specified in Section 10.07(h)(vi).

“Affiliated Lender Cap” has the meaning specified in Section 10.07(h)(iv).

“Agent Parties” has the meaning specified in Section 10.02(4).

“Agent-Related Distress Event” means, with respect to the Administrative Agent or any other Person that directly or indirectly controls the Administrative Agent (each, a “Distressed Agent”), (a) that such Distressed Agent is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Agent or any substantial part of such Distressed Agent’s assets, or (c) such Distressed Agent is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent or its assets to be, insolvent or bankrupt; provided that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly controls the Administrative Agent by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide the Administrative Agent with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit the Administrative Agent (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with the Administrative Agent.

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

“Agents” means, collectively, the Administrative Agent, the Collateral Agent and the Supplemental Administrative Agents (if any).

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

“AHYDO Payment” means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an “applicable high yield discount obligation” within the meaning of Section 163(i) of the Code.

“All-In Yield” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurodollar Rate floor, Base Rate floor or EURIBOR floor (with such increased amount being determined in the manner described in the final proviso of this definition), or otherwise, in each case, incurred or payable by the Borrower ratably to all lenders of such Indebtedness; provided that OID and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); provided, further, that “All-In Yield” shall not include arrangement fees, structuring fees, commitment fees, underwriting fees, success fees, advisory fees, ticking fees, consent or amendment fees and any
similar fees (regardless of how such fees are computed and whether shared or paid, in whole or in part, with or to any or all lenders) and any other fees not generally paid ratably to all lenders of such Indebtedness; provided further that, with respect to any Loans of an applicable Class that includes a Eurodollar Rate floor, Base Rate floor or EURIBOR floor, (1) to the extent that the Reference Rate on the date that the All-In Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the Applicable Rate for such Loans of such Class for the purpose of calculating the All-In Yield and (2) to the extent that the Reference Rate on the date that the All-In Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the All-In Yield.

“Annual Financial Statements” means the audited combined balance sheets and related audited combined statements of operations, comprehensive operations, cash flows and equity of the McAfee Business (derived from the financial statements of Intel Corporation as if the McAfee Business had operated on a standalone basis) for the fiscal year ended December 31, 2016 and the period ended April 3, 2017.

“Applicable Discount” has the meaning specified in Section 2.05(1)(e)(C)(2).

“Applicable Percentage” means, in respect of the Revolving Facility, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitments at such time, subject to adjustment as provided in Section 2.17. If the commitment of each Revolving Lender to make Revolving Loans and the obligation of the Issuing Banks to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have otherwise expired in full, then the Applicable Percentage of each Revolving Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments.

“Applicable Rate” means a percentage per annum equal to:

(a) (x) with respect to Closing Date USD Term Loans, (i) 4.50% for Eurodollar Rate Loans and (ii) 3.50% for Base Rate Loans and (y) with respect to Closing Date Euro Term Loans, 4.25%.

(b) with respect to Revolving Loans and unused Revolving Commitments under the Closing Date Revolving Facility and Letter of Credit fees (i) until delivery of financial statements for the first full fiscal quarter ending after the Closing Date pursuant to Section 6.01, (A) 4.50% for Eurodollar Rate Loans and Letter of Credit fees, (B) 3.50% for Base Rate Loans and (C) 0.50% for the Commitment Fee Rate for unused Revolving Commitments and (ii) thereafter, the following percentages per annum, based upon the First Lien Leverage Ratio as specified in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(1):

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<th>First Lien Net Leverage Ratio</th>
<th>Eurodollar Rate and Letter of Credit Fees</th>
<th>Base Rate</th>
<th>Commitment Fee Rate</th>
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<tbody>
<tr>
<td>1</td>
<td>3.50:1.00</td>
<td>4.50%</td>
<td>3.50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>2</td>
<td>&lt;3.50:1.00 and 3.00:1.00</td>
<td>4.25%</td>
<td>3.25%</td>
<td>0.375%</td>
</tr>
<tr>
<td>3</td>
<td>&lt;3.00:1.00</td>
<td>4.00%</td>
<td>3.00%</td>
<td>0.25%</td>
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Any increase or decrease in the Applicable Rate resulting from a change in the First Lien Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(1); provided that, at the option of the Required Facility Lenders under the Closing Date Revolving Facility, “Pricing Level I” (as set forth above) shall apply as of (x) the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply) or (y) the first Business Day after an Event of Default under Section 8.01(1) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

“Appropriate Lender” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class and (b) with respect to Letters of Credit, (i) the relevant Issuing Banks and (ii) the relevant Revolving Lenders.

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


“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions of property or assets of the Borrower or any Restricted Subsidiary (each referred to in this definition as a “disposition”); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.02 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable Law) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets, any disposition of inventory or goods (or other assets) held for sale and property or assets no longer used or useful in the ordinary course,

(iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower),

(iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and
(v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the
Borrower and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the disposition of all or substantially all of the assets of the Borrower in a manner permitted pursuant to Section 7.03;

(c) any disposition in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 7.05,
any Permitted Investment or any acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market
value for any individual transaction or series of related transactions of less than $40.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a
Restricted Subsidiary to a Restricted Subsidiary;

(f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar
Business;

(g) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or
consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other
agreement;

(h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary;

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty
Event) with respect to assets;

(j) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified
Securitization Facility, sales of receivables in connection with Receivables Financing Transactions or the disposition of an account receivable in
connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or
similar proceedings;

(k) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date,
including asset securitizations permitted hereunder;

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current
assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other
dispositions of accounts receivable in connection with the collection thereof;

(m) the licensing or sublicensing of intellectual property or other general intangibles in the ordinary course of business or consistent with
industry practice;
(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 7.01;

(s) the issuance of directors’ qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are (x) not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (y) non-core assets or surplus or unnecessary to the business or operations of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property;

(v) dispositions of property in connection with any Sale-Leaseback Transaction;

(w) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction;

(x) the sales of property or assets for an aggregate fair market value since the date of this Agreement not to exceed the greater of $155.0 million and 20.0% of Consolidated EBITDA of the Borrower for the most recently ended Test Period (calculated on a pro forma basis) determined at the time of the making of such disposition; and

(y) the sales of property or assets for an aggregate fair market value not to exceed $60.0 million in any calendar year with unused amounts in any calendar year being carried over to successive calendar years.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.
“Attorney Costs” means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel, to the extent documented in reasonable detail and invoiced.

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease Obligation of any Person, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor engaged by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(1)(e); provided that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); provided further that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“Australian Dollars” means the lawful currency of Australia.

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(2)(c).

“Available Incremental Amount” has the meaning specified in Section 2.14(4)(c).

“Available LC Currency” means (i) with respect to Letters of Credit issued after the Closing Date, Dollars, Euros, Sterling, Yen and Australian Dollars and (ii) with respect to Existing Letters of Credit, Dollars, Euros, Sterling, Yen, Australian Dollars, Shekels and Rupees.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” has the meaning specified in Section 8.02.

“Base Rate” means for any day a fluctuating rate per annum (subject solely in the case of the Closing Date USD Term Loans to a floor of 2.00% per annum) equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as announced from time to time by the Administrative Agent as its “prime rate” and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day). The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Article III hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.
“Basket” means any amount, threshold, exception or value (including by reference to the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, Consolidated EBITDA or Total Assets) permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction, action, judgment or amount under any provision in this Agreement or any other Loan Document.

“Big Boy Letter” means a letter from a Lender acknowledging that (1) an assignee may have information regarding Holdings, the Borrower and any Subsidiary of the Borrower, their ability to perform the Obligations or any other material information that has not previously been disclosed to the Administrative Agent and the Lenders ("Excluded Information"), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Term Loans to such assignee pursuant to Section 10.07(h) or (l) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such assignee, Holdings, the Borrower and the Subsidiaries of the Borrower with respect to the nondisclosure of the Excluded Information; or otherwise in form and substance reasonably satisfactory to such assignee, the Administrative Agent and assigning Lender.

“Board of Directors” means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “Board of Directors” means the Board of Directors of the Borrower.

“Borrower” has the meaning specified in the introductory paragraph to this Agreement.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower Offer of Specified Discount Prepayment” means any offer by any Borrower Party to make a voluntary prepayment of Loans at a specified discount to par pursuant to Section 2.05(1)(e)(B).

“Borrower Parties” means the collective reference to Holdings, the Borrower and each Subsidiary of the Borrower and “Borrower Party” means any of them.

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by any Borrower Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(1)(e)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by any Borrower Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(1)(e)(D).

“Borrowing” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Rate Loans or EURIBOR Rate Loans, having the same Interest Period.

“Broker-Dealer Regulated Subsidiary” means any Subsidiary of the Borrower that is registered as a broker-dealer under the Exchange Act or any other applicable Laws requiring such registration.
“Business Day” means any day that is not a Legal Holiday and (i) with respect to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, any day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market and (ii) with respect to any interest rate settings as to a EURIBOR Rate Loan, any fundings, disbursements, settlements and payments in respect of any such EURIBOR Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such EURIBOR Rate Loan, any day on which dealings in deposits in Euros are conducted by and between banks in the European interbank market.

“Canadian Dollars” means the lawful currency of Canada.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Lease Obligations) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Restricted Subsidiaries.

“Capital Stock” means:

1. in the case of a corporation, corporate stock or shares in the capital of such corporation;
2. in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
3. in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
4. any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP in accordance with Section 1.03.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

“Captive Insurance Subsidiary” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“Cash Collateral” has the meaning specified in the definition of “Cash Collateralize.”
“Cash Collateral Account” means an account held at, and subject to the sole dominion and control of, the Collateral Agent.

“Cash Collateralize” means, in respect of an Obligation, to provide and pledge cash or Cash Equivalents in Dollars as collateral, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent or the relevant Issuing Bank with respect to any Letter of Credit, as applicable (and “Cash Collateralization” has a corresponding meaning). “Cash Collateral” has a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means:

(1) Dollars;

(2) (a) Euros, Yen, Canadian Dollars, Sterling or any national currency of any participating member state of the EMU;

(b) in the case of any Foreign Subsidiary or any jurisdiction in which the Borrower or any Restricted Subsidiary conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;
(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of “A” or higher from S&P or “A2” or higher from Moody’s (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aa3 (or the equivalent thereof) or better by Moody’s (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, provided that such amounts, except amounts used to pay non-Dollar denominated obligations of the Borrower or any Restricted Subsidiary in the ordinary course of business, are expected by the Borrower to be converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts (and solely to the extent so converted on or prior to such tenth (10th) Business Day).

“Cash Management Agreement” means any agreement entered into from time to time by Holdings, the Borrower or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

“Cash Management Bank” means any Person that is an Agent, a Lender or an Affiliate of an Agent or Lender on the Closing Date or at the time it entered into a Secured Cash Management Agreement, whether or not such Person subsequently ceases to be an Agent, a Lender or an Affiliate of an Agent or Lender.
“Cash Management Obligations” means obligations owed by Holdings, the Borrower or any Restricted Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

“Cash Management Services” means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

“Change of Control” means the occurrence of any of the following after the Closing Date:

1. at any time prior to the consummation of the first public offering of the Borrower’s common equity or the common equity of any Parent Company after the Closing Date, the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; or

2. at any time following the consummation of the first public offering of the Borrower’s common equity or the common equity of any Parent Company after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act) (excluding any employee benefit plan of such Person and its subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), directly or indirectly, of Equity Interests of the Borrower representing more than forty percent (40%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded);
(3) any “Change of Control” (or any comparable term) in any document pertaining to the Second Lien Credit Facility or any Refinancing Indebtedness thereof, in each case with an aggregate outstanding principal amount in excess of the Threshold Amount; or

(4) the Borrower ceases to be directly or indirectly wholly owned by Holdings (or any successor or Parent Company that has become a Guarantor in lieu of Holdings);

unless, in the case of clause (1) or (2) above, the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower.

“Charge” means any charge, fee, expense, expenditure, cost, loss, accrual, reserve of any kind and any other deduction included in the calculation of Consolidated Net Income.

“Class” (a) when used with respect to Lenders, refers to whether such Lenders have Loans or Commitments with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Closing Date USD Term Loan Commitments, Closing Date Euro Term Loan Commitments Revolving Commitments, Incremental Revolving Commitments, Other Revolving Commitments, Incremental Term Commitments, Commitments in respect of any Class of Replacement Loans, Extended Revolving Commitments of a given Extension Series or Other Term Loan Commitments of a given Class of Other Loans, in each case not designated part of another existing Class and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Closing Date USD Term Loans, Closing Date Euro Term Loans, Revolving Loans under the Closing Date Revolving Facility, Incremental Term Loans, Incremental Revolving Loans, Other Revolving Loans, Replacement Loans, Extended Term Loans, Loans made pursuant to Extended Revolving Commitments, or Other Term Loans, in each case not designated part of another existing Class. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have identical terms and conditions shall be construed to be in the same Class. For the avoidance of doubt, the Closing Date USD Term Loans and the Closing Date Euro Term Loans shall each constitute a separate Class of Loans.

“Closing Date” means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, and the Closing Date Term Loans are made to the Borrower pursuant to Section 2.01(1), which date was September 29, 2017.

“Closing Date Euro Term Loan Commitment” means, as to each Euro Term Lender, its obligation to make a Closing Date Euro Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Euro Term Lender’s name on Schedule 2.01 under the caption “Closing Date Euro Term Loan Commitment” or in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption) pursuant to which such Euro Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Sections 2.14, 2.15 or 2.16). The initial aggregate amount of the Closing Date Euro Term Loan Commitments is €507.0 million.
“**Closing Date Euro Term Loans**” means the Euro Term Loans made by the Euro Term Lenders on the Closing Date to the Borrower pursuant to Section 2.01(1)(b).

“**Closing Date Loans**” means the Closing Date Term Loans and any Closing Date Revolving Borrowing.

“**Closing Date Revolving Borrowing**” means one or more Borrowings of Revolving Loans on the Closing Date pursuant to Section 2.01(2) in accordance with the requirements specified or referred to in Section 6.14; **provided**, that, without limitation, Letters of Credit may be issued on the Closing Date to backstop or replace letters of credit outstanding on the Closing Date (including deemed issuances of Letters of Credit under this Agreement resulting from an existing issuer of letters of credit outstanding on the Closing Date agreeing to become an Issuing Bank under this Agreement).

“**Closing Date Revolving Facility**” means the Revolving Facility made available by the Revolving Lenders as of the Closing Date.

“**Closing Date Loans**” means the Closing Date Term Loans and any Closing Date Revolving Borrowing.

“**Closing Date Revolving Borrowing**” means, as to each USD Term Lender, its obligation to make a Closing Date USD Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such USD Term Lender’s name on Schedule 2.01 under the caption “Closing Date USD Term Loan Commitment” or in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption) pursuant to which such USD Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Sections 2.14, 2.15 or 2.16). The initial aggregate amount of the Closing Date USD Term Loan Commitments is $2,555.0 million.

“**Closing Date USD Term Loans**” means the USD Term Loans made by the USD Term Lenders on the Closing Date to the Borrower pursuant to Section 2.01(a).


“**Collateral**” means all the “Collateral” (or equivalent term) as defined in any Collateral Document and the Mortgaged Properties, if any.

“**Collateral Agent**” has the meaning specified in the introductory paragraph to this Agreement.

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

1. the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(1)(c) or (b) pursuant to the Security Agreement or Sections 6.11 or 6.13 at such time required by the Security Agreement or by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

2. all Obligations shall have been unconditionally guaranteed by (a) Holdings (or any successor thereto), (b) each Restricted Subsidiary of the Borrower that is a wholly owned Material Subsidiary (other than any Excluded Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(1) hereto and (c) any Restricted Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) (i) the Second Lien Term Loans (or
any Refinancing Indebtedness in respect thereof having an aggregate principal amount in excess of the Threshold Amount), (ii) any Junior Indebtedness, (iii) any Permitted Incremental Equivalent Debt or (iv) any Credit Agreement Refinancing Indebtedness (the Persons in the preceding clauses (a) through (c) collectively, the “Guarantors”);

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject only to Liens permitted by Section 7.01, in

(a) all the Equity Interests of the Borrower,

(b) all Equity Interests of each direct, wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) that is directly owned by any Loan Party and

(c) 65% of the issued and outstanding Equity Interests of each class of each (i) wholly owned Material Domestic Subsidiary that is (a) a Foreign Subsidiary Holdco and (b) directly owned by a Loan Party and (ii) wholly owned Material Foreign Subsidiary, in each case, that is directly owned by a Loan Party (in each case, to the extent such Material Domestic Subsidiary or Material Foreign Subsidiary is not an Excluded Subsidiary (other than by virtue of being a Foreign Subsidiary Holdco or Foreign Subsidiary, as applicable));

(4) except to the extent otherwise provided hereunder or under any Collateral Document, including subject to Liens permitted by Section 7.01, and in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents, the Obligations and the Guaranty shall have been secured by a security interest in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts other than Securitization Assets), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing (in each case, other than Excluded Assets), in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by

(i) delivering certificated securities and instruments, in which a security interest can be perfected by physical control, in each case to the extent expressly required hereunder or the Security Agreement (solely in respect of any promissory note in excess of $25.0 million, Indebtedness of any Restricted Subsidiary that is not a Guarantor that is owing to any Loan Party (which may be evidenced by the Intercompany Note and pledged to the Collateral Agent) and certificated Equity Interests of the wholly owned Restricted Subsidiaries otherwise required to be pledged pursuant to the Collateral Documents to the extent required under clause (3) above),

(ii) filing financing statements under the Uniform Commercial Code of any applicable jurisdiction,

(iii) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or
(iv) filings in the applicable real estate records with respect to Mortgaged Properties (or any fixtures related to Mortgaged Properties) to the extent required by the Collateral Documents and

(b) with the priority required by the Collateral Documents; provided that any such security interests in the Collateral shall be subject to the terms of the Intercreditor Agreements to the extent expressly required by this Agreement; and

(5) subject to the exceptions and limitations set forth in this Agreement, the Collateral Agent shall have received counterparts of a Mortgage, together with the other deliverables described in Section 6.11(2)(b), with respect to each Material Real Property listed on Schedule 1.01(2) to the extent required to be delivered pursuant to Section 6.11 or Section 6.13 (the "Mortgaged Properties") duly executed and delivered by the record owner of such property within the time periods set forth in said Sections; provided that (i) to the extent any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes, intangibles tax, documentary tax or similar recording fees or taxes, (a) the relevant Mortgage shall not secure an amount in excess of the fair market value of the Mortgaged Property subject thereto and (b) the relevant Mortgage shall not secure the Indebtedness in respect of Letters of Credit or the Revolving Facility to the extent those jurisdictions impose such aforementioned taxes on paydowns or re-advances applicable to such Indebtedness unless it is feasible to limit recovery to a capped amount that would not be subject to re-borrowing and (ii) no flood insurance or compliance with any flood insurance laws shall be required with respect to any Mortgaged Property.

The foregoing definition shall not require, and the Loan Documents shall not contain any requirements as to, the creation, perfection or maintenance of pledges of, or security interests in, Mortgages on, or the obtaining of Mortgage Policies, surveys, abstracts or appraisals or taking other actions with respect to, any Excluded Assets.

The Collateral Agent may grant extensions of time for the creation, perfection or maintenance of security interests in, or the execution or delivery of any Mortgage and the obtaining of title insurance, surveys or Opinions of Counsel with respect to, particular assets (including extensions beyond the Closing Date for the creation, perfection or maintenance of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation, perfection or maintenance 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.

No actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect or make enforceable such security interests in any assets (including any intellectual property registered or applied for in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No perfection through control agreements or perfection by "control" shall be required with respect to any assets (other than to the extent required under clause (4)(a)(i) above). There shall be no (x) Guaranties governed under the laws of any non-U.S. jurisdiction, (y) requirement to obtain any landlord waivers, estoppels or collateral access letters or (z) requirement to perfect a security interest in any letter of credit rights, other than by the filing of a UCC financing statement.

"Collateral Documents" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(c), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.
“Commitment” means a Revolving Commitment, Incremental Revolving Commitment, Closing Date USD Term Loan Commitment, Closing Date Euro Term Loan Commitment, Incremental Term Commitment, Other Revolving Commitment, Other Term Loan Commitment, Extended Revolving Commitment of a given Extension Series, or any commitment in respect of Replacement Loans, as the context may require.

“Commitment Fee Rate” means a percentage per annum equal to the Applicable Rate set forth in the “Commitment Fee Rate” column of the chart in the definition of “Applicable Rate.”

“Committed Loan Notice” means a notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of Eurodollar Rate Loans or EURIBOR Rate Loans of a given Class, pursuant to Section 2.02(1), which, if in writing, shall be substantially in the form of Exhibit A, or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer of the Borrower.

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

“Compensation Period” has the meaning specified in Section 2.12(3)(b).

“Compliance Certificate” means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower:

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)),

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of (i) Excess Cash Flow for each fiscal year commencing with the financial statements for the fiscal year ending on or about December 29, 2018 and (ii) the Net Proceeds received during the applicable period (after the Closing Date in the case of the fiscal year ending on or about December 30, 2017) by or on behalf of the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b) (i) and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii),

(3) commencing with the certificate delivered pursuant to Section 6.02(1) for the first full fiscal quarter ending after the Closing Date, (x) if on the last day of the relevant fiscal quarter there are outstanding Revolving Loans and Letters of Credit (excluding (i) undrawn Letters of Credit in an aggregate amount of up to $30.0 million and (ii) Letters of Credit (whether drawn or undrawn) to the extent Cash Collateralized or backstopped on terms reasonably acceptable to the applicable Issuing Bank) in an aggregate principal amount exceeding 35% of the aggregate principal amount of all Revolving Commitments under all outstanding Revolving Facilities (including any Incremental Revolving Facilities), setting forth a calculation of the First Lien Net Leverage Ratio as of the last day of the most recent Test Period, or (y) if the First Lien Net Leverage Ratio as of the last day of the most recent Test Period would result in a change in the applicable “Pricing Level” as set forth in the definition of “Applicable Rate,” setting forth a calculation of such First Lien Net Leverage Ratio.
"Consolidated Current Assets" means, as at any date of determination, the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees, derivative financial instruments and any assets in respect of Hedge Agreements, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"Consolidated Current Liabilities" means, as at any date of determination, the total liabilities of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) Revolving Loans and L/C Obligations under this Agreement or any other revolving loans and letter of credit obligations under any other revolving credit facility, (F) the current portion of any Capitalized Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs, (K) any liabilities in respect of Hedge Agreements and (L) deferred revenue, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (b), (l), (q), and (r)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers’ acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of “Consolidated Interest Expense” pursuant to the definition thereof; plus
(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or other levies that replace or are intended to be in lieu of taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of “Consolidated Net Income,” and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; plus

(c) Consolidated Depreciation and Amortization Expense for such period; plus

(d) any other non-cash Charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower in its sole discretion may determine not to add back such non-cash Charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash Charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); plus

(e) Charges consisting of income attributable to minority interests and non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, Consolidation; plus

(f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including transaction and termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreement or otherwise to the extent permitted under Section 7.07 and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; plus

(g) Charges, including any loss or discount, related to the sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; plus

(h) cash receipts (or any netting arrangements resulting in reduced cash Charges) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; plus

(i) any Charges pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); plus
(j) any net pension or other post-employment benefit Charges representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification Topic 715—Compensation—Retirement Benefits, and any other items of a similar nature, plus

(k) the amount of earnout obligation expense incurred in connection with (including adjustments thereto) any acquisitions and Investments, whether consummated prior to or after the Closing Date; plus

(l) the amount of “run rate” cost savings, synergies and operating expense reductions (and revenue enhancements in the case of price increases instituted prior to the Closing Date) related to restructurings, cost savings initiatives, operational changes or other initiatives or recommended (in reasonable detail) by any quality of earnings or similar diligence report made available to the Administrative Agent conducted by financial advisors (which financial advisors are nationally recognized or reasonably acceptable to the Administrative Agent (it being understood and agreed that any of the “Big Four” accounting firms are acceptable)) that are projected by the Borrower in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within 18 months after the end of such period (which cost savings, synergies and operating expense reductions (and revenue enhancements) shall be calculated on a pro forma basis as though such cost savings, synergies and operating expense reductions (and revenue enhancements) had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that “run rate” means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) pro forma cost savings, synergies or operating expense reduction adjustments made pursuant to Section 1.07); provided, that the aggregate amount of any such “run rate” adjustments added back pursuant to this clause (l) and Section 1.07 shall not exceed in the aggregate 25% of Consolidated EBITDA for such period (as calculated before giving effect to any such “run rate” adjustments), plus

(m) for periods occurring prior to the Closing Date, any corporate allocations made to Borrower or any of its Restricted Subsidiaries in excess of the costs incurred by the McAfee Business on a standalone basis; plus

(n) any payments in the nature of compensation or expense reimbursement made to independent board members; plus

(o) (i) for periods occurring prior to the Closing Date, internal software development costs expensed during the period and (ii) for periods occurring after the Closing Date, internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; plus
(p) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are being held for sale or are subject to an agreement to dispose of such operations, if selected by the Borrower in its sole discretion, only when and to the extent such operations are actually disposed of); plus

(q) adjustments, exclusions and add-backs consistent with Regulation S-X of the SEC; plus

(r) without duplication of revenues recognized in any other period, the net amount, if any, of the difference between (to the extent the amount in the following clause (i) exceeds the amount in the following clause (ii)): (i) the deferred revenue of such Person and its Restricted Subsidiaries as of the last day of such period (the “Determination Date”) and (ii) the deferred revenue of such Person and its Restricted Subsidiaries as of the date that is 12 months prior to the Determination Date, in each case, calculated without giving effect to adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition),

(b) the amount of any income consisting of losses attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period; and

(c) any net income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are being held for sale or are subject to an agreement to dispose of such operations, if selected by the Borrower in its sole discretion, only when and to the extent such operations are actually disposed of).

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended on October 1, 2016, December 31, 2016, April 1, 2017 and July 1, 2017, Consolidated EBITDA for such fiscal quarters shall be $161.021 million, $257.868 million, $175.604 million and $170.962 million, respectively (the “Deemed EBITDA Numbers”), in each case, as may be subject to add-backs and adjustments (without duplication and other than add-backs and adjustments related to the Transactions) pursuant to the definition of “Consolidated EBITDA” and appropriate exclusions in the definition of “Consolidated Net Income” (for the avoidance of doubt, without duplication of add-backs, adjustments and exclusions already incorporated in arriving at such Deemed EBITDA Numbers) and Section 1.07 for the applicable Test Period. For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.07.
“Consolidated First Lien Secured Debt” means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet on a consolidated basis in accordance with GAAP, consisting only of (i) Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a first priority lien on the Collateral on a pari passu basis with the Closing Date Term Loans and (ii) other Capitalized Lease Obligations and purchase money Indebtedness of the Loan Parties in excess of the Threshold Amount and secured by a first priority lien; provided, Consolidated First Lien Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“Consolidated Interest Expense” means, with respect to any Person for any period, without duplication, the cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); excluding, in each case:

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (2)(a) and (2)(b) above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815, Derivatives and Hedging,

(iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness,

(v) “additional interest” owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) interest expense attributable to a Parent Company resulting from push-down accounting,
(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting,

(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto in connection with the Transactions, any acquisition or Investment and

(xii) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness (including any security or collateral trust arrangements related thereto), including the Facilities and the Second Lien Credit Facilities.

For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, one-time, non-recurring or unusual gains or Charges (including relating to any strategic initiatives and accruals and reserves in connection with such gains or Charges and including legal fees, expenses, settlements and judgments) and special items; restructuring Charges; accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); Charges related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; exit, separation, transition and start-up stand-alone Charges associated with the separation of the McAfee Business from Intel Corporation; Excluded TPG/Intel Costs; Public Company Costs; Charges related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses; special compensation Charges, consulting fees; signing, retention or completion bonuses and charges, and executive recruiting costs; Charges incurred in connection with strategic initiatives; transition Charges and duplicative running and operating Charges; Charges in connection with non-ordinary course product and intellectual property development; Charges incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization Charges (including Charges relating to business optimization programs, new systems design, Charges related to systems establishment, implementation, integration and upgrades and project start-up); accruals and reserves; Charges attributable to the implementation of cost-savings initiatives and operating improvements and consolidations; curtailments and modifications to pension and post-employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;
(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary and, solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; provided that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period;

(6) solely for the purpose of determining Excess Cash Flow and the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); provided that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment Charges or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, Compensation—Stock Compensation or Accounting Standards Codification Topic 505-50, Equity-Based Payments to Non-Employees, and (c) any income (loss) attributable to deferred compensation plans or trusts;
(11) any Charges during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the syndication and incurrence of any Indebtedness, including the Second Lien Credit Facility and any Facilities hereunder), issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of any Indebtedness, including the the Second Lien Credit Documents and the Loan Documents) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, Business Combinations);

(12) accruals and reserves that are established or adjusted in connection with the Transactions, an Investment or an acquisition that are required to be established or adjusted as a result of the Transactions, such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—Financial Instruments;

(15) any net realized or unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, Guarantees, or any comparable regulation;

(17) any non-cash rent expense;

(18) [reserved];

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.
In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.

Notwithstanding the foregoing, for the purpose of Section 7.05(a) (other than clause (3)(d) of Section 7.05(a)), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of Section 7.05(a).

“Consolidated Secured Debt” means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet on a consolidated basis in accordance with GAAP, consisting only of (i) Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien on the Collateral and (ii) other Capitalized Lease Obligations and purchase money Indebtedness of the Loan Parties in excess of the Threshold Amount and secured by a lien; provided, Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“Consolidated Total Debt” means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a consolidated balance sheet in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; provided, Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“Consolidated Working Capital” means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.
“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

1. to purchase any such primary obligation or any property constituting direct or indirect security therefor;
2. 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; or
3. to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Contract Consideration” has the meaning specified in clause (2)(k) of the definition of “Excess Cash Flow.”

“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.

“Controlled Investment Affiliate” means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

“Convertible Indebtedness” means Indebtedness of the Borrower (which may be guaranteed by the Guarantors) permitted to be incurred hereunder that is either (a) convertible into common equity of the Borrower (and cash in lieu of fractional shares) or cash (in an amount determined by reference to the price of such common equity) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common equity of the Borrower or cash (in an amount determined by reference to the price of such common equity).

“Corrective Extension Amendment” has the meaning specified in Section 2.16(6).

“Credit Agreement Refinanced Debt” has the meaning assigned to such term in the definition of “Credit Agreement Refinancing Indebtedness.”

“Credit Agreement Refinancing Indebtedness” means (a) Permitted Equal Priority Refinancing Debt, (b) Permitted Junior Priority Refinancing Debt or (c) Permitted Unsecured Refinancing Debt; provided that, in each case, such Indebtedness is issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) to Refinance, in whole or in part, existing Loans (or, if applicable, unused Commitments) or any then-existing Credit Agreement Refinancing Indebtedness (“Credit Agreement Refinanced Debt”); provided, further, that (i) the terms of any such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or
redemption premiums and terms) shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith) or (B) if otherwise not consistent with the terms of such Credit Agreement Refinanced Debt, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Credit Agreement Refinanced Debt, except with respect to covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such Refinancing, (ii) any such Indebtedness shall have a maturity date that is no earlier than the Credit Agreement Refinanced Debt and a Weighted Average Life to Maturity equal to or greater than that of the Credit Agreement Refinanced Debt as of the date of determination, (iii) such Indebtedness shall not have a greater principal amount (or shall not have a greater accreted value, if applicable) than the principal amount (or accreted value, if applicable) of the Credit Agreement Refinanced Debt plus accrued interest, fees and premiums (including tender premium) and penalties (if any) thereon and fees, expenses, original issue discount and upfront fees incurred in connection with such Refinancing plus the amount of any other Indebtedness permitted under one or more other Baskets under Section 7.02 (which shall be deemed a utilization of any such Baskets), (iv) such Credit Agreement Refinanced Debt shall be repaid, defeased or satisfied and discharged, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, within five (5) Business Days after the date such Credit Agreement Refinanced Indebtedness is issued, incurred or obtained with the Net Proceeds received from the incurrence or issuance of such Indebtedness and (v) any mandatory prepayments of (I) any Permitted Junior Priority Refinancing Debt may not be made except to the extent that prepayments are not prohibited hereunder and to the extent required hereunder or pursuant to the terms of any Permitted Equal Priority Refinancing Debt, first made or offered to the holders of the Term Loans constituting First Lien Obligations and any such Permitted Equal Priority Refinancing Debt, and (II) any Permitted Equal Priority Refinancing Debt in respect of events described in Section 2.05(2)(a), (b) and (d)(i), may be made on a pro rata basis, less than a pro rata basis or greater than a pro rata basis (but not greater than a pro rata basis as compared to any Class of Term Loans constituting First Lien Obligations with an earlier maturity date unless the Credit Agreement Refinanced Debt was so entitled to participate on a greater than a pro rata basis) with each Class of Term Loans constituting First Lien Obligations under Section 2.05(2)(a), (b) and (d)(i), provided, further, that “Credit Agreement Refinancing Indebtedness” may be incurred in the form of a bridge or other interim credit facility intended to be Re Finance (or which converts into or is exchanged for) long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (ii) of the second proviso in this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (ii) above) and in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other interim credit facility, clause (v) of the preceding proviso in this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

“Credit Extension” means each of the following: (i) a Borrowing and (ii) an L/C Credit Extension.

“Cure Amount” has the meaning specified in Section 8.04(1).

“Cure Expiration Date” has the meaning specified in Section 8.04(1)(a).

“Debt Fund Affiliate” means any Affiliate of an Investor that is a bona fide diversified debt fund that is not (a) a natural person or (b) Holdings, the Borrower or any Subsidiary of the Borrower.
“Debt Representative” means, with respect to any series of Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent or representative under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning specified in Section 2.05(2)(g).

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

“Default Rate” means (i) with respect to any amounts denominated in Dollars, an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate applicable to Base Rate Loans that are Revolving Loans plus (c) 2.00% per annum; provided that with respect to the outstanding principal amount of any Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(3)) plus 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws and (ii) with respect to any amounts denominated in Euros, an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to Euro Term Loans (giving effect to Section 2.02(3)) plus 2.00% per annum, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means, subject to Section 2.17(2), any Lender that (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of L/C Obligations, within one Business Day of the date required to be funded by it hereunder, (b) has failed to pay over to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, (c) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (d) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (e) has, or has a direct or indirect parent company that has, either (i) admitted in writing that it is insolvent or (ii) become subject to a Lender-Related Distress Event. Any determination by the Administrative Agent as to whether a Lender is a Defaulting Lender shall be conclusive absent manifest error.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Borrower, any Restricted Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of Section 7.05(a).
“Designated Revolving Commitments” means any commitments to make loans or extend credit on a revolving basis (or delayed draw basis) to the Borrower or any Restricted Subsidiary by any Person other than the Borrower or any Restricted Subsidiary that have been designated in an Officer’s Certificate delivered to the Administrative Agent as “Designated Revolving Commitments” until such time as the Borrower subsequently delivers an Officer’s Certificate to the Administrative Agent to the effect that such commitments will no longer constitute “Designated Revolving Commitments”; provided that, during such time (including at the time of the incurrence of such Designated Revolving Commitments), (i) except for purposes of the definition of “Applicable Rate,” the First Lien Net Leverage Ratios set forth in Section 2.05(2)(a) and Section 2.05(2)(b) and determining actual compliance with the Financial Covenant, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Interest Coverage Ratio, Total Net Leverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the availability of any Baskets hereunder and (ii) commencing on the date such Designated Revolving Commitments are established after giving pro forma effect to the incurrence of the entire committed amount of the Indebtedness thereunder (but without netting any cash proceeds thereof), such committed amount under such Designated Revolving Commitments may thereafter be borrowed (and reborrowed, if applicable), in whole or in part, from time to time, without further compliance with any Basket or financial ratio or test under this Agreement (including the Interest Coverage Ratio, Total Net Leverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio).

“Discharge” means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.

“Discount Prepayment Accepting Lender” has the meaning assigned to such term in Section 2.05(1)(e)(B)(2).

“Discount Range” has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

“Discount Range Prepayment Amount” has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

“Discount Range Prepayment Notice” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(1)(e)(C)(1) substantially in the form of Exhibit J.

“Discount Range Prepayment Offer” means the written offer by a Lender, substantially in the form of Exhibit K, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“Discount Range Prepayment Response Date” has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

“Discount Range Proration” has the meaning assigned to such term in Section 2.05(1)(e)(C)(3).

“Discounted Prepayment Determination Date” has the meaning assigned to such term in Section 2.05(1)(e)(D)(3).
“Discounted Prepayment Effective Date” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(1)(e)(B), Section 2.05(1)(e)(C) or Section 2.05(1)(e)(D), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“Discounted Term Loan Prepayment” has the meaning assigned to such term in Section 2.05(1)(e)(A).

“disposition” has the meaning set forth in the definition of “Asset Sale.”

“Disqualified Institution” means (a) any competitor of the Borrower or its Subsidiaries identified in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Closing Date or (ii) the Administrative Agent from time to time after September 6, 2017, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by the Borrower to the Arrangers in writing (as provided herein) on or prior to the Closing Date (or related funds of any such Persons) and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) that are either (w) reasonably identifiable as such on the basis of their name or (x) are identified as such in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date (other than bona fide debt funds primarily investing in loans); provided that any Person that is a Lender or a Participant and subsequently becomes a Disqualified Institution (but was not a Disqualified Institution at the time it became a Lender or a Participant, as applicable) shall be deemed to not be a Disqualified Institution hereunder (in the case of any such Participant that is not a Lender, solely with respect to the participations held by such Participant). The identity of Disqualified Institutions may be communicated by the Administrative Agent to a Lender upon request, but will not be otherwise posted or distributed to any Person.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the then Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; provided that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) termination, death or disability; provided further any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity
subscription or equity holders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the “maximum fixed repurchase price” of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt, Consolidated First Lien Secured Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Borrower.

“Distressed Agent” shall have the meaning provided in the definition of the term Agent-Related Distress Event.

“Distressed Person” shall have the meaning provided in the definition of the term Lender-Related Distress Event.

“Dollar” and “$” mean lawful money of the United States.

“Dollar Amount” means with respect to any L/C Obligation (or any risk participation therein), (A) if denominated in Dollars, the amount thereof and (B) if denominated in an Available LC Currency other than Dollars, the equivalent amount thereof converted to Dollars as determined by the Administrative Agent on the basis of the Spot Rate.

“Domestic Subsidiary” means any direct or indirect Subsidiary of the Borrower that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“ECF Payment Amount” has the meaning specified in Section 2.05(2)(a).

“ECF Percentage” has the meaning specified in Section 2.05(2)(a).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” has the meaning specified in Section 10.07(a).
“EMU” means the economic and monetary union as contemplated in the Treaty on European Union.

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

“Environmental Claim” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries (a) in the ordinary course of such Person’s business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability or Environmental Law (hereinafter “Claims”), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“Environmental Laws” means any and all Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, human health.

“Environmental Liability” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract or other written agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equal Priority Intercreditor Agreement” means, to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies), at the option of the Borrower and the Administrative Agent acting together in good faith, either (a) an intercreditor agreement substantially in the form of Exhibit G-1, together with any material changes thereto which are reasonably acceptable to the Administrative Agent and which material changes, at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof, (b) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies), in each case with such modifications thereto as the Administrative Agent and the Borrower may agree or (c) any other intercreditor agreement posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such intercreditor agreement within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement is reasonable and to have consented to such intercreditor agreement and to the Administrative Agent’s execution thereof.
“Equity Interests” means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

“Equity Offering” means any public or private sale of common equity or Preferred Stock of the Borrower or any Parent Company (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Borrower’s or any Parent Company’s common equity registered on Form S-4 or Form S-8;

(2) issuances to any Restricted Subsidiary of the Borrower; and

(3) any such public or private sale that constitutes an Excluded Contribution.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer 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 of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of withdrawal liability or written notification that a Multiemployer Plan is “insolvent” (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) 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; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 430(k) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.
“Escrowed Proceeds” means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term “Escrowed Proceeds” shall include any interest earned on the amounts held in escrow.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“EURIBOR Rate” means for any Interest Period with respect to a EURIBOR Rate Loan, the rate per annum equal to the Euro Interbank Offered Rate (“EURIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Reuters screen page (or such other commercially available source providing quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., Brussels time, two (2) Business Days prior to the commencement of such Interest Period, for Euro deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower; provided, further, that if such rate is not available at such time for any reason, then the “EURIBOR Rate” for such Interest Period shall be (a) a comparable successor or alternative interbank rate for deposits in Euros that is, at such time, broadly accepted as the prevailing market practice for syndicated leveraged loans of this type in lieu of the “EURIBOR Rate” and is reasonably acceptable to the Borrower and the Administrative Agent or (b) if no such broadly accepted comparable successor interbank rate exists at such time, a successor or alternative index rate as the Administrative Agent and the Borrower may reasonably determine and which successor or alternative index rate described in this clause (b), at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before effectiveness thereof and, if the Required Lenders shall not have objected to such successor or alternative index rate within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that such successor or alternative index rate is reasonable and to have consented to the effectiveness of such successor or alternative index rate; provided, further, that in no event shall the EURIBOR Rate for the Closing Date Euro Term Loans be less than 0%.

“EURIBOR Rate Loan” means a Loan that bears interest at a rate based on the EURIBOR Rate.

“Euro” or “euro” means the single currency of participating member states of the EMU.

“Euro Term Lender” means a Term Lender with a Closing Date Euro Term Loan Commitment or an outstanding Euro Term Loan.

“Euro Term Loan” means each Term Loan denominated in Euros.
“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate ("LIBOR"), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations as may be designated by the Administrative Agent from time to time) (in such case, the "LIBOR Rate") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower; provided, further, that if such rate is not available at such time for any reason, then the “LIBOR Rate” for such Interest Period shall be (a) a comparable successor or alternative interbank rate for deposits in Dollars that is, at such time, broadly accepted as the prevailing market practice for syndicated leveraged loans of this type in lieu of the ”LIBOR Rate” and is reasonably acceptable to the Borrower and the Administrative Agent or (b) if no such broadly accepted comparable successor interbank rate exists at such time, a successor or alternative index rate as the Administrative Agent and the Borrower may reasonably determine and which successor or alternative index rate described in this clause (b), at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before effectiveness thereof and, if the Required Lenders shall not have objected to such successor or alternative index rate within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that such successor or alternative index rate is reasonable and to have consented to the effectiveness of such successor or alternative index rate; provided, further, that in no event shall (x) the Eurodollar Rate for the Closing Date USD Term Loans that bear interest at a rate based on clauses (a) and (b) of this definition be less than 1.00% or (y) the Eurodollar Rate for Revolving Loans that bear interest at a rate based on clauses (a) and (b) of this definition be less than 0%.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

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

“Excess Cash Flow” means, for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower for such period,

(b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,
(c) decreases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) and, without duplication, decreases in long-term accounts receivable and increases in the long-term portion of deferred revenue (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such decreases or increases, as applicable, arising from acquisitions or Asset Sales outside the ordinary course of assets by the Borrower or any Restricted Subsidiary during such period or the application of recapitalization or purchase accounting).

(d) [reserved];

(e) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period and

(f) cash receipts in respect of Hedge Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income; over

(2) the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of the Original Transactions or any Permitted Acquisition, Investment permitted hereunder or any similar transaction) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash losses, charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of the definition of “Consolidated Net Income,”

(b) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property accrued or made in cash during such period, in each case except to the extent financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (i) the principal component of payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans, Permitted Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), the Second Lien Term Loans, “Permitted Incremental Equivalent Debt,” any “Other Loans” and “Credit Agreement Refinancing Indebtedness” (each, as defined in the Second Lien Credit Agreement as in effect on the date hereof) and any other Indebtedness outstanding pursuant to Section 7.02 (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07, mandatory prepayment of Term Loans pursuant to Section 2.05(2)(b), any mandatory prepayments of Second Lien Term Loans pursuant to Section 2.05(2) of the Second Lien Credit Agreement (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) and any mandatory Discharge of (I) Permitted Incremental Equivalent Debt or
Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), (II) “Permitted Incremental Equivalent Debt,” any “Other Loans” and “Credit Agreement Refinancing Indebtedness” (each, as defined in the Second Lien Credit Agreement as in effect on the date hereof) and (III) of any other Indebtedness outstanding pursuant to Section 7.02 (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) pursuant to the corresponding provisions of the governing documentation thereof, in each case, to the extent required due to an Asset Sale or Casualty Event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase, but excluding (x) all other prepayments of Term Loans or Second Lien Term Loans, (y) all prepayments of Revolving Loans and all prepayments in respect of any other revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (z) payments on any Junior Indebtedness, except in each case to the extent permitted to be paid pursuant to Section 7.05) made during such period, in each case, except to the extent financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(d) [Reserved],

(e) increases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) and, without duplication, increases in long-term accounts receivable and decreases in the long-term portion of deferred revenue (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such increases or decreases, as applicable, arising from acquisitions or Asset Sales outside the ordinary course by the Borrower or any Restricted Subsidiary during such period or the application of recapitalization or purchase accounting),

(f) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income,

(g) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of cash consideration paid by the Borrower and the Restricted Subsidiaries (on a consolidated basis) in connection with investments made during such period (including Permitted Acquisitions, investments constituting Permitted Investments and investments made pursuant to Section 7.05), except to the extent such investments were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(h) the amount of Restricted Payments paid in cash during such period (other than Restricted Payments made pursuant to Section 7.05(b)(15)), except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

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(i) the aggregate amount of expenditures (including expenditures for the payment of financing fees) paid in cash during such period to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income, except to the extent such expenditures were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(j) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are made in connection with any prepayment or redemption of Indebtedness to the extent (x) such premium, make-whole or penalty payments were not expensed during such period or are not deducted in calculating Consolidated Net Income and (y) such prepayments or redemptions reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.05(2)(a),

(k) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into prior to or during such period and (2) any planned cash expenditures by the Borrower or any of its Restricted Subsidiaries (the “Planned Expenditures”), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, acquisitions of intellectual property, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness)); provided that to the extent that the aggregate amount of internally generated cash flow actually utilized to finance such Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, acquisitions of intellectual property, permitted scheduled payments of Indebtedness that were permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow, at the end of such period of four consecutive fiscal quarters,

(l) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period plus the amount of distributions with respect to taxes made in such period under Section 7.05(b)(14), to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(m) cash expenditures in respect of Hedging Obligations during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income,

(n) any fees, expenses or charges incurred during such period (including the Transaction Expenses), or any amortization thereof for such period, in connection with any acquisition, investment, disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any
debt instrument (including any amendment or other modification of this Agreement, the other Loan Documents, the Second Lien Credit
Documents and related documents with respect to any other Indebtedness) and including, in each case, any such transaction consummated
prior to the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred
during such period as a result of any such transaction, in each case whether or not successful, and

(o) at the option of the Borrower, any amounts in respect of investments (including Permitted Acquisitions, Investments constituting
Permitted Investments and Investments made pursuant to Section 7.05) and Restricted Payments (including related earnouts and similar
payments) which could have been deducted pursuant to clauses (g) or (h) above if made in such period, but which are made after the end
of such period and prior to the date upon which a mandatory prepayment for such period would be required under Section 2.05(2)(a)
(which amounts, if so deducted in accordance with this clause (o), shall not affect the calculation of Excess Cash Flow in any future
period).

thereunder.

“Excluded Assets” means (i) (x) any fee-owned real property (other than Material Real Property), (y) any leasehold interest in real
property and (z) any improved fee-owned real property (whether already mortgaged, or is required or intended to be mortgaged, at any time of
determination) located in a flood hazard area or such property or mortgage thereon would be subject to any flood insurance due diligence, flood
insurance requirements or compliance with any flood insurance laws (it being agreed that (A) if it is subsequently determined that any such improved
real property subject to, or otherwise required or intended to be subject to, a mortgage is or might be located in a flood hazard area, such property shall
be deemed to constitute an Excluded Asset until a determination is made that such property is not located in a flood hazard area and does not require
flood insurance, and (B) if there is an existing mortgage on such property, such mortgage shall be released if located in a special flood hazard area and
would require flood insurance or if it cannot determined whether such fee owned real property is located in a special flood hazard area or would require
flood insurance if the time or information necessary to make such determination would (as determined by the Borrower in good faith) delay or impair
the intended date of funding any Loan or effectiveness of any amendment or supplement under this Agreement), (ii) motor vehicles and other assets
subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) all
commercial tort claims that are not expected to result in a judgment or settlement payment in excess of $25.0 million (as determined by the Borrower in
good faith), (iv) any governmental or regulatory licenses, authorizations, certificates, charters, franchises, approvals and consents (whether Federal,
State, Provincial or otherwise) to the extent a security interest therein is prohibited or restricted thereby or requires any consent or authorization from a
Governmental Authority not obtained (without any requirement to obtain such consent or authorization) other than to the extent such prohibition or
restriction is ineffective under the UCC, (v) assets to the extent the pledge thereof or grant of security interests therein (x) is prohibited or restricted by any applicable Law, rule or regulation or would require any consent, approval or authorization of any governmental or
regulatory authority not obtained (without any requirement to obtain such any consent, approval or authorization) (other than proceeds and receivables thereof, the
assignment of which is expressly deemed effective under the UCC, (v) assets to the extent the pledge thereof or grant of security interests therein (x) is prohibited or restricted by any applicable Law, rule or regulation or would require any consent, approval or authorization of any governmental or
regulatory authority not obtained (without any requirement to obtain such any consent, approval or authorization) (other than proceeds and receivables thereof, the
assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition), (y) would
cause the destruction, invalidation or abandonment of such asset under applicable Law (solely with respect to any intellectual property), or (z) is
prohibited or restricted by any contract or would require any consent, approval, license or other authorization of any third party (other than Holdings
or its Subsidiaries) pursuant to a contract, in each case, existing on the Closing Date or at the time of the acquisition of such asset and was not incurred in contemplation thereof (other than in the case of capital leases and purchase financings) not obtained after giving effect to the anti-assignment provisions of the UCC, (vi) margin stock and Equity Interests in any Person that is not the Borrower or a wholly owned Restricted Subsidiary of the Borrower, (vii) Equity Interests in Immaterial Subsidiaries and Excluded Subsidiaries (other than first tier Foreign Subsidiaries and first tier Foreign Subsidiary Holdcos that are Restricted Subsidiaries; provided that in the case of any first tier Foreign Subsidiary or first tier Foreign Subsidiary Holdco, the pledge of the Equity Interests of such Subsidiary shall be limited to no more than 65% of the total issued and outstanding Equity Interests of a Foreign Subsidiary or Foreign Subsidiary Holdco), (viii) any lease, license or agreement (not otherwise subject to clause (v) above) or any property that is subject to a capital lease, purchase money security interest or similar arrangement, in each case permitted by this Agreement, to the extent that a grant of a security interest therein (a) would violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law or (b) would require governmental or regulatory approval, consent or authorization not obtained (without any requirement to obtain such approval, consent or authorization), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition), (ix) [reserved], (x) letter of credit rights, except to the extent constituting a supporting obligation for other Collateral as to which perfection of the security interest therein is accomplished by the filing of a UCC financing statement, (xi) any intent-to-use trademark applications filed in the United States Patent and Trademark Office, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. Section 1051, prior to the accepted filing of a “Statement of Use” and issuance of a “Certificate of Registration” pursuant to Section 1(d) of the Lanham Act or an accepted filing of an “Amendment to Allege Use” whereby such intent-to-use trademark application is converted to a “use in commerce” application pursuant to Section 1(c) of the Lanham Act, (xii) any assets where the burden or cost (including any adverse tax consequences) of obtaining a security interest therein or perfection thereof exceeds the practical benefit to the Lenders afforded thereby as reasonably determined between the Borrower and the Administrative Agent, (xiii) any assets to the extent a security interest in such assets or perfection thereof would result in material adverse tax consequences to the Borrower, any Parent Company or any Restricted Subsidiary as reasonably determined by the Borrower in good faith, in consultation with the Administrative Agent, (xiv) any assets located in or governed by any non-U.S. jurisdiction law or regulation (other than (x) Equity Interests and intercompany debt of Foreign Subsidiaries otherwise required to be pledged pursuant to the Collateral Documents and (y) assets that can be perfected by the filing of a UCC financing statement), including any intellectual property located in a non-U.S. jurisdiction and (xv) cash and Cash Equivalents (except to the extent constituting identifiable proceeds of Collateral which is perfected by the filing of a UCC financing statement), deposit, securities, commodities and other accounts, securities entitlements and related assets held in such account except, in each case, to the extent a security interest therein is perfected by filing of a UCC financing statement and other than any Cash Collateral, Cash Collateral Account or other cash or assets deposited with a Secured Party as Collateral.

“Excluded Contribution” means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any joint ventures that are not Restricted Subsidiaries; and
(3) the sale (other than to a Restricted Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower;

in each case, designated as Excluded Contributions pursuant to an Officer’s Certificate and that are excluded from the calculation set forth in clause (3) of Section 7.05(a); provided that Excluded Contributions shall not include Cure Amounts.

“Excluded Proceeds” means, with respect to any Asset Sale or Casualty Event, the sum of, (1) any Net Proceeds therefrom that constitute Declined Proceeds and (2) any Net Proceeds therefrom that otherwise are waived by the Required Facility Lenders from the requirement to be applied to prepay the applicable Term Loans pursuant to Section 2.05(2)(b).

“Excluded Subsidiaries” means all of the following and “Excluded Subsidiary” means any of them:

(1) any Subsidiary that is not a direct, wholly owned Subsidiary of the Borrower or a Subsidiary Guarantor,
(2) any Foreign Subsidiary,
(3) any Foreign Subsidiary Holdco,
(4) any Domestic Subsidiary that is a Subsidiary of any (i) Foreign Subsidiary or (ii) Foreign Subsidiary Holdco,
(5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law or by Contractual Obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty (including any Broker-Dealer Regulated Subsidiary) or if such Guaranty would require governmental (including regulatory) or third party (other than any Loan Party or their respective Subsidiaries) consent, approval, license or authorization not obtained,
(6) any special purpose vehicle (or similar entity), receivables subsidiary or any Securitization Subsidiary,
(7) any Captive Insurance Subsidiary or not-for-profit Subsidiary,
(8) any Subsidiary that is not a Material Subsidiary,
(9) any Subsidiary where the Borrower and the Administrative Agent reasonably determine that the burden or cost (including any adverse tax consequences) of providing the Guaranty will outweigh the benefits to be obtained by the Lenders therefrom, and
(10) any Unrestricted Subsidiary.
“Excluded Swap Obligation” means, with respect to any Loan Party, (a) any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act (each such obligation, a “Swap Obligation”), if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.02 of the Guaranty and any other “keepwell, support or other agreement” for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the guarantee of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation, or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Party is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Loan Party becomes or would become effective with respect to such Swap Obligation, or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Loan Party as specified in any agreement between the relevant Loan Parties and hedge counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means, with respect to each Agent and each Lender,

(1) any tax imposed on (or measured by) such Agent or Lender’s net income or profits (or franchise or net worth tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction), other than a connection arising solely from such Agent or Lender having executed, delivered, enforced, 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 any Loan or Loan Document,

(2) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any jurisdiction described in clause (1),

(3) other than with respect to and to the extent that any Lender becomes a party hereto pursuant to the Borrower’s request under Section 3.07, any U.S. federal tax that is withheld or required to be withheld on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which such Lender acquires such interest or the date on which the affected partner becomes a partner of such Lender), or (ii) designates a new Lending Office (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which the Lender designates a new Lending Office or, if applicable, the date on which the affected partner designates a new
(4) any withholding tax attributable to such Lender’s failure to comply with Section 3.01(3),
(5) any tax imposed under FATCA,
(6) any U.S. federal backup withholding under Section 3406 of the Code, and
(7) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (6) of this definition.

“Excluded TPG/Intel Costs” means all Charges in connection with services, including consulting arrangements, provided by any employee of TPG Capital L.P. and/or or Intel Corporation or any of their respective Affiliates (other than any such Charges incurred under the TSA).

“Existing Letters of Credit” means any letters of credit or bank guaranties outstanding on the Closing Date described in Schedule 1.01(3).

“Existing Revolving Class” has the meaning specified in Section 2.16(2).

“Existing Term Loan Class” has the meaning specified in Section 2.16(1).

“Extended Revolving Commitments” has the meaning specified in Section 2.16(2).

“Extended Term Loans” has the meaning specified in Section 2.16(1).

“Extending Lender” means an Extending Revolving Lender or an Extending Term Lender, as the case may be.

“Extending Revolving Lender” has the meaning specified in Section 2.16(3).

“Extending Term Lender” has the meaning specified in Section 2.16(3).

“Extension” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“Extension Amendment” has the meaning specified in Section 2.16(4).

“Extension Election” has the meaning specified in Section 2.16(3).

“Extension Minimum Condition” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“Extension Request” means any Term Loan Extension Request or any Revolving Extension Request, as the case may be.
“Extension Series” means any Term Loan Extension Series or a Revolving Extension Series, as the case may be.

“Facilities” means the Closing Date USD Term Loans, Closing Date Euro Term Loans, the Revolving Facility, a given Extension Series of Extended Revolving Commitments, a given Class of Other Term Loans, a given Extension Series of Extended Term Loans, a given Class of Incremental Term Loans, a given Class of Incremental Revolving Commitments, any Other Revolving Loan (or Commitment) or a given Class of Replacement Loans, as the context may require, and “Facility” means any of them.

“fair market value” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“FATCA” means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any current or future regulations promulgated thereunder or official interpretations thereof), any applicable intergovernmental agreement entered into in respect thereof, and any provision of law or administrative guidance implementing or interpreting such provisions, including any agreements entered into pursuant to any such intergovernmental agreement or Section 1471(b)(1) of the Code as of the date hereof (or any amended or successor version described above).

“FCPA” has the meaning specified in Section 5.01.

“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, 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 (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three depository institutions of recognized standing selected by it. For the avoidance of doubt, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Financial Covenant” means the covenant specified in Section 7.12(1).

“Financial Covenant Cross Default” has the meaning specified in Section 8.01(2).

“Financial Covenant Event of Default” has the meaning specified in Section 8.01(2).

“Financial Officer” means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

“First Lien Net Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Secured Debt outstanding as of the last day of such Test Period, minus the Unrestricted Cash Amount on such last day to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.
“First Lien Obligations” means the Obligations, the Permitted Incremental Equivalent Debt and the Credit Agreement Refinancing Indebtedness, in each case, that are, or purported to be, secured by the Collateral on an equal priority basis (but without regard to the control of remedies) with Liens on the Collateral securing the Closing Date Term Loans. For the avoidance of doubt, “First Lien Obligations” shall include the Closing Date Term Loans.

“First Lien/Second Lien Intercreditor Agreement” means any of (a) the First Lien/Second Lien Intercreditor Agreement in substantially in the form of Exhibit G-2, dated as of the Closing Date, among the Collateral Agent, the Loan Parties, JPMorgan Chase Bank, N.A., as Second Priority Representative for the Second Priority Debt Parties (each, as defined therein) and each additional representative party thereto from time to time, (b) an intercreditor agreement substantially in the form of Exhibit G-2, together with any material changes thereto which are reasonably acceptable to the Borrower and the Administrative Agent and which material changes, at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof, (c) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement, in each case with such modifications thereto as the Administrative Agent and the Borrower may agree or (d) any other intercreditor agreement posted to the Lenders not less than five (5) Business Days before execution thereof, and if the Required Lenders shall not have objected to such intercreditor agreement within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement is reasonable and to have consented to such intercreditor agreement and to the Administrative Agent’s execution thereof.

“Flood Insurance Laws” means, collectively, (i) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“floor” means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

“Foreign Asset Sale” has the meaning specified in Section 2.05(2)(h).

“Foreign Casualty Event” has the meaning specified in Section 2.05(2)(h).

“Foreign Lender” means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“Foreign Plan” means any employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).
“Foreign Subsidiary” means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

“Foreign Subsidiary Holdco” means a Subsidiary substantially all of whose assets consists (directly or indirectly) of the Capital Stock or indebtedness of one or more Foreign Subsidiaries.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to an Issuing Bank, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations, other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time. At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); provided, however, that any such election, once made, will be irrevocable; provided, further that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower’s election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. The Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with Section 1.03 and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or the Loan Parties at “fair value”, as defined therein.

Notwithstanding the foregoing, if at any time any change occurs after the Closing Date in GAAP (or IFRS) or in the application thereof that, in each case, would affect the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document (including, but not limited to, the impact of Accounting Standards Update 2016-2, Revenue from Contracts with Customers (Topic 606) or similar revenue recognition policies promulgated after the Closing Date), and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); provided that until so
amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) without giving effect to such change therein and (b) if reasonably requested by the Administrative Agent with respect to periods ending prior to the date that is one year after the effectiveness of such change, the Borrower shall provide to the Administrative Agent (for distribution to the Lenders), together with any financial statements to be delivered pursuant to Section 6.01, a summary reconciliation between calculations of any such ratios or requirements required to be included in the corresponding Compliance Certificate to be delivered pursuant to Section 6.02(4) made before and after giving effect to such change in GAAP (or IFRS). For the avoidance of doubt, subject to the requirements of the foregoing clause (b), the operation of this paragraph shall otherwise have no effect with respect to any financial statements required to be delivered pursuant to Section 6.01 unless the Borrower otherwise elects.

“General Debt Basket Reallocated Amount” means any amount that, at the option of the Borrower, has been reallocated from Section 7.02(b)(12)(b) to clause (A)(1) of the Available Incremental Amount, which shall be deemed to be a utilization of the Basket set forth in Section 7.02(b)(12)(b).

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

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

“guarantee” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with the Transaction or any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or
determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor” has the meaning specified in clause (2) of the definition of “Collateral and Guarantee Requirement.” For avoidance of doubt, the Borrower may, in its sole discretion, cause any Parent Company or Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Restricted Subsidiary shall be a Guarantor hereunder for all purposes; provided that (i) in the case of any Parent Company or Restricted Subsidiary organized in a foreign jurisdiction, the Administrative Agent shall be reasonably satisfied with the jurisdiction of organization of such Parent Company or Restricted Subsidiary and (ii) the Administrative Agent shall have received at least two (2) Business Days prior to the effectiveness of such joinder (or such later date as reasonably agreed by the Administrative Agent) all documentation and other information in respect of such Guarantor required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

“Guaranty” means (a) the Guaranty substantially in the form of Exhibit E made by Holdings and each Subsidiary Guarantor, (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11 and (c) each other guaranty and guaranty supplement delivered by any Parent Company or Restricted Subsidiary pursuant to the second sentence of the definition of “Guarantor.”

“Hazardous Materials” means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

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

“Hedge Bank” means any Person party to a Secured Hedge Agreement that is an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing on the Closing Date or at the time it enters into such Secured Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing.
“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedge Agreement. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

“Holdings” has the meaning specified in the introductory paragraph to this Agreement.

“Honor Date” has the meaning specified in Section 2.03(3)(a).

“Identified Participating Lenders” has the meaning specified in Section 2.05(1)(e)(C)(3).

“Identified Qualifying Lenders” has the meaning specified in Section 2.05(1)(e)(D)(3).

“IFRS” means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

“Immaterial Subsidiary” means any Restricted Subsidiary of the Borrower that is not a Material Subsidiary.

“Immediate Family Members” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Incremental Amendment” has the meaning specified in Section 2.14(6).

“Incremental Amounts” has the meaning specified in clause (1) of the definition of Refinancing Indebtedness.

“Incremental Commitments” has the meaning specified in Section 2.14(1).

“Incremental Facility Closing Date” has the meaning specified in Section 2.14(4).

“Incremental Lenders” has the meaning specified in Section 2.14(3).

“Incremental Loan” has the meaning specified in Section 2.14(2).

“Incremental Loan Request” has the meaning specified in Section 2.14(1).

“Incremental Revolving Commitments” has the meaning specified in Section 2.14(1).

“Incremental Revolving Facility” has the meaning specified in Section 2.14(1).

“Incremental Revolving Lender” has the meaning specified in Section 2.14(3).

“Incremental Revolving Loan” has the meaning specified in Section 2.14(2).
“Incremental Term Commitments” has the meaning specified in Section 2.14(1).

“Incremental Term Lender” has the meaning specified in Section 2.14(3).

“Incremental Term Loan” has the meaning specified in Section 2.14(2).

“Indebtedness” means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:
   (a) in respect of borrowed money;
   (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);
   (c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business; or
   (d) representing the net obligations under any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; provided that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person; provided that notwithstanding the foregoing, Indebtedness will be deemed not to include:

   (i) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice,
(ii) reimbursement obligations under commercial letters of credit (provided that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) obligations under or in respect of Qualified Securitization Facilities,

(iv) accrued expenses,

(v) deferred or prepaid revenues, and

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

provided further that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

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

“Indemnitees” has the meaning specified in Section 10.05.

“Independent Assets or Operations” means, with respect to any Parent Company, that Parent Company’s total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company’s corresponding consolidated amount.

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

“Information” has the meaning specified in Section 10.09.

“Intellectual Property Security Agreements” has the meaning specified in the Security Agreement.

“Intercompany Note” means the Intercompany Note, dated as of the Closing Date, substantially in the form of Exhibit Q executed by the Borrower and each Restricted Subsidiary of the Borrower party thereto.

“Intercreditor Agreement” means, as applicable, any First Lien/Second Lien Intercreditor Agreement and any Equal Priority Intercreditor Agreement.

“Interest Coverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period to (b) Consolidated Interest Expense of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.
“Interest Payment Date” means, (a) as to any Loan of any Class other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date of the Loans of such Class; provided that if any Interest Period for a Eurodollar Rate Loan or EURIBOR Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan of any Class, the last Business Day of each March, June, September and December and the applicable Maturity Date of the Loans of such Class.

“Interest Period” means, as to each Eurodollar Rate Loan and EURIBOR Rate Loan, the period commencing on the date such Eurodollar Rate Loan or EURIBOR Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan or EURIBOR Rate Loan, as applicable, and ending on the date one, two, three or six months thereafter, or to the extent consented to by each applicable Lender, twelve months, as selected by the Borrower in its Committed Loan Notice; provided that:

1. any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

2. any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

3. no Interest Period shall extend beyond the applicable Maturity Date for the Class of Loans of which such Eurodollar Rate Loan or EURIBOR Rate Loan is a part.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

“Investment Grade Securities” means:

1. securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

2. debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

3. investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

4. corresponding instruments in countries other than the United States customarily utilized for high quality investments.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of
management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of “Permitted Investments” and “Unrestricted Subsidiary” and Section 7.05,

(1) “Investments” will include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower will be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation; minus
(b) the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

“Investor” means any of (i) TPG Capital, L.P., Thoma Bravo, LLC, GIC Pte Ltd., StepStone Group LP, Fisher Lynch Co-Investment Partnership II, L.P., Performance Equity Management, any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing and (ii) Intel Corporation and any of its Affiliates.

“IP Rights” has the meaning specified in Section 5.15.

“IRS” means Internal Revenue Service of the United States.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuing Bank” means Morgan Stanley Senior Funding, Inc., JPMorgan Chase Bank, N.A., Citibank, N.A. and Bank of America, N.A., in each case, in its capacity as an issuer of Letters of Credit hereunder and solely with respect to its L/C Commitment, together with its permitted successors and assigns and any other Revolving Lender that becomes an Issuing Bank in accordance with Section 2.03(12). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by any Affiliate of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.03 with respect to such Letters of Credit).
“Issuing Bank Document” means with respect to any Letter of Credit, the L/C Application, and any other document, agreement and instrument entered into by any Issuing Bank and the Borrower (or any of its Subsidiaries) or in favor of such Issuing Bank and relating to such Letter of Credit.

“Junior Indebtedness” means any Indebtedness of any Loan Party that by its terms is contractually subordinated in right of payment or security to the Obligations of such Loan Party arising under the Loans or the Guaranty (including, for the avoidance of doubt, the Second Lien Term Loans).

“Junior Lien Debt” has the meaning specified in clause (39) of the definition of “Permitted Liens”.

“L/C Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant Issuing Bank.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed prior to the Honor Date or refinanced as a Revolving Borrowing.

“L/C Commitment” means, with respect to any Person, the amount set forth opposite the name of such Person on Schedule 2.01 under the caption “L/C Commitment.”

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“L/C Expiration Date” means the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for the applicable Revolving Facility (or, if such day is not a Business Day, the next preceding Business Day).

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be the stated amount thereof in effect at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Sublimit” means an amount equal to the lesser of (a) $50.0 million and (b) the aggregate amount of the Revolving Commitments. The L/C Sublimit is part of, and not in addition to, the Revolving Facility.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Loan, any Incremental Revolving Commitment, any Other Loan, any Other Revolving Commitments, any Replacement Loan, any Extended Term Loan or any Extended Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.
“Laws” means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, 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.

“Legal Holiday” means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

“Lender” has the meaning specified in the introductory paragraph to this Agreement and, as context requires (including for purposes of the definition of “Secured Parties”), includes any Issuing Bank and its successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.” For the avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, an Incremental Amendment or an amendment in respect of Replacement Loans, as the case may be, and to the extent such Refinancing Amendment, Incremental Amendment or amendment in respect of Replacement Loans shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, Schedule 2.01 sets forth the name of each Lender. Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) without the Borrower’s written consent shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings; provided that the Loans of any such Disqualified Institution shall not be excluded for purposes of making a determination of Required Lenders if the action in question affects such Disqualified Institution in a disproportionately adverse manner than its effect on the other Lenders; provided, further, that if any assignment or participation is made to any Disqualified Institution without the Borrower’s prior written consent in violation of clause (v) of Section 10.07(b) the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

“Lender-Related Distress Event” means, with respect to any Lender or any direct or indirect parent company of such Lender (each, a “Distressed Person”), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or (d) that such Distressed Person becomes the subject of a Bail-in Action; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any direct or indirect parent company of
a Lender by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any letter of credit or bank guaranty (or similar document with respect to any Letter of Credit denominated in an Available LC Currency other than Dollars) issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit; provided, however, that any commercial letter of credit issued hereunder shall provide solely for cash payment upon presentation of a sight draft.

“LIBOR” has the meaning specified in the definition of “Eurodollar Rate.”

“Lien” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event will an operating lease be deemed to constitute a Lien.

“Limited Condition Transactions” means any (1) Permitted Acquisition or other Investment or similar transaction (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise) permitted hereunder by the Borrower or one or more of its Restricted Subsidiaries, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness and (3) any Restricted Payment requiring irrevocable notice in advance thereof (other than in connection with any Restricted Payment to any Permitted Holders or any other beneficial owners of the Borrower).

“Loan” means an extension of credit under Article II by a Lender (x) to the Borrower in the form of a Term Loan or (y) to the Borrower in the form of a Revolving Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) any Refinancing Amendment, Incremental Amendment, Extension Amendment or amendment in respect of Replacement Loans, (d) the Guaranty, (e) the Collateral Documents, (f) the Intercreditor Agreements and (g) each L/C Application.

“Loan Increase” means a Term Loan Increase or Revolving Commitment Increase.

“Loan Parties” means, collectively, (a) Holdings, (b) the Borrower and (c) each Subsidiary Guarantor.

“Management Services Agreement” means the management services agreement or similar agreements among one or more of the Investors or certain of their respective management companies associated with it or their advisors, if applicable, and the Borrower (or any Parent Company).
“Management Stockholders” means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date.

“Margin Stock” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Market Capitalization” means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Borrower or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 7.05(b)(8) multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“Material Adverse Effect” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under the Loan Documents.

“Material Domestic Subsidiary” means any Domestic Subsidiary that is a Material Subsidiary.

“Material Foreign Subsidiary” means any Foreign Subsidiary that is a Material Subsidiary.

“Material Real Property” means any fee-owned real property located in the United States and owned by any Loan Party with a fair market value in excess of $75.0 million on the Closing Date (if owned by a Loan Party on the Closing Date) or at the time of acquisition (if acquired by a Loan Party after the Closing Date).

“Material Subsidiary” means, as of the Closing Date and thereafter at any date of determination, each Restricted Subsidiary of the Borrower (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and the Restricted Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; provided that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), all Restricted Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of the Borrower and the Restricted Subsidiaries as of the last day of the most recent Test Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiaries for such Test Period) 7.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than sixty (60) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i)
designate in writing to the Administrative Agent one or more Restricted Subsidiaries as “Material Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Restricted Subsidiaries (to the extent applicable), in each case, other than any Restricted Subsidiaries that otherwise constitute Excluded Subsidiaries. At all times prior to the delivery of the aforementioned financial statements, such determinations shall be made based on the Pro Forma Financial Statements.

“Maturity Date” means (i) with respect to the Closing Date Term Loans that have not been extended pursuant to Section 2.16, the seventh anniversary of the Closing Date (the “Original Term Loan Maturity Date”), (ii) with respect to the Closing Date Revolving Facility, to the extent not extended pursuant to Section 2.16, the fifth anniversary of the Closing Date (the “Original Revolving Facility Maturity Date”), (iii) with respect to any Class of Extended Term Loans or Extended Revolving Commitments, the final maturity date as specified in the applicable Extension Amendment, (iv) with respect to any Other Term Loans or Other Revolving Commitments, the final maturity date as specified in the applicable Refinancing Amendment, (v) with respect to any Class of Replacement Loans, the final maturity date as specified in the applicable amendment to this Agreement in respect of such Replacement Loans and (vi) with respect to any Incremental Loans or Incremental Revolving Commitments, the final maturity date as specified in the applicable Incremental Amendment; provided, in each case, that if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“Maximum Rate” has the meaning specified in Section 10.11.

“McAfee Business” means the business conducted by Foundation Technology Worldwide LLC and its Subsidiaries.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage Policies” has the meaning specified in Section 6.11(2)(b)(ii).

“Mortgaged Properties” has the meaning specified in paragraph (5) of the definition of “Collateral and Guarantee Requirement.”

“Mortgages” means collectively, the deeds of trust, trust deeds, hypothecs, deeds to secure debt and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, pursuant to Section 6.13(2) and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered pursuant to Section 6.11.

“Multiemployer Plan” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Income” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.
“Net Proceeds” means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate cash and Cash Equivalents received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable Law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable (including any additional Tax Distributions to be made as a result of the transactions giving rise to such cash and cash equivalents received) as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than the First Lien Obligations and Indebtedness secured by Liens that are expressly subordinated to the Liens securing the Obligations) secured by a Lien on such assets and required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; provided that (a) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed $25.0 million and (b) no such net cash proceeds shall constitute Net Proceeds under this clause (1) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed $50.0 million (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (1)); and

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, any Permitted Equity Issuance by the Borrower or any Parent Company or any contribution to the common equity capital of the Borrower, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

“Net Proceeds Percentage” has the meaning specified in Section 2.05(b)(2)(b)
“Non-Consenting Lender” has the meaning specified in Section 3.07.

“Non-Defaulting Lender” means, at any time, a Lender that is not a Defaulting Lender.

“Non-Excluded Taxes” means all 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.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(2)(c).

“Non-Recourse Indebtedness” means Indebtedness that is non-recourse to the Borrower and the Restricted Subsidiaries.

“Note” means a Term Note or Revolving Note, as the context may require.

“Notice of Intent to Cure” has the meaning specified in Section 8.04.

“Obligations” means all

(1) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and other amounts are allowed claims in such proceeding,

(2) obligations (other than Excluded Swap Obligations) of any Loan Party or Restricted Subsidiary arising under any Secured Hedge Agreement and

(3) Cash Management Obligations under each Secured Cash Management Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees (including Letter of Credit fees), Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document.

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Hedge Bank or Cash Management Bank, the obligations of Holdings, the Borrower or any Subsidiary under any Secured Hedge Agreement and under any Secured Cash Management Agreement shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Hedging Obligations under Secured Hedge Agreements or of the holders of Cash Management Obligations under Secured Cash Management Agreements.

“OFAC” has the meaning specified in Section 5.17.

“Offered Amount” has the meaning specified in Section 2.05(1)(e)(D)(1).
“Offered Discount” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Officer” means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Borrower or any other Person, as the case may be.

“Officer’s Certificate” means a certificate signed on behalf of a Person by an Officer of such Person.

“OID” means original issue discount.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

“ordinary course of business” means activity conducted in the ordinary course of business of the Borrower and any Restricted Subsidiary.

“Organizational Documents” means

(1) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Original Revolving Facility Maturity Date” has the meaning specified in the definition of “Maturity Date.”

“Original Term Loan Maturity Date” has the meaning specified in the definition of “Maturity Date.”


“Other Applicable ECF” means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

“Other Applicable Indebtedness” means Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Indebtedness secured on a pari passu basis with the Obligations, together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a pari passu basis with the Obligations.
“Other Applicable Net Proceeds” means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

“Other Commitments” means Other Revolving Commitments and/or Other Term Loan Commitments.

“Other Loans” means one or more Classes of Other Revolving Loans and/or Other Term Loans that result from a Refinancing Amendment.

“Other Revolving Commitments” means one or more Classes of Revolving Commitments hereunder that result from a Refinancing Amendment.

“Other Revolving Loans” means one or more Classes of Revolving Loans that result from a Refinancing Amendment.

“Other Taxes” means all present or future stamp or documentary Taxes, intangible, recording, filing, excise (that is not based on net income), property or similar Taxes arising 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 imposed with respect to an assignment, grant of participation, designation of a new office for receiving payments by or on account of the Borrower or other transfer (other than an assignment, designation or other transfer at the request of the Borrower).

“Other Term Loan Commitments” means one or more Classes of Term Loan commitments hereunder that result from a Refinancing Amendment.

“Other Term Loans” means one or more Classes of Term Loans that result from a Refinancing Amendment.

“Outstanding Amount” means (a) with respect to the Term Loans and Revolving Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Loans (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Credit Extensions as a Revolving Borrowing), as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the outstanding principal amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or an Issuing Bank, as applicable, in accordance with banking industry rules on interbank compensation.

“Parent Company” means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of Holdings and/or the Borrower (for the avoidance of doubt, in the case of the Borrower, including Holdings), as applicable.

“Pari Passu Lien Debt” has the meaning specified in clause (39) of the definition of “Permitted Liens.”
“Participant” has the meaning specified in Section 10.07(d).

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

“Participating Lender” has the meaning specified in Section 2.05(1)(e)(C)(2).

“Partnership Audit Rules” means Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015 (and any Treasury regulations or other guidance that may be promulgated in the future relating thereto) and, in each case, any analogous provisions of state, local, and non-U.S. law.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates 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 preceding five plan years.

“Perfection Certificate” has the meaning specified in the Security Agreement.

“Permitted Acquisition” has the meaning specified in clause (3) of the definition of “Permitted Investments.”

“Permitted Asset Swap” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Borrower or any Restricted Subsidiary and another Person; provided that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with Section 2.05(2)(b)(i).

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) on the Borrower’s common equity purchased by the Borrower in connection with the issuance of any Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

“Permitted Convertible Indebtedness Call Transaction” means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

“Permitted Equal Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Guarantor in the form of one or more series of senior secured notes, bonds or debentures or first lien secured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); provided that (i) such Indebtedness is secured by Liens on all or a portion of the Collateral on a basis that is equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies) and is not secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the applicable requirements set forth in the provisos to the definition of “Credit Agreement Refinancing Indebtedness,” (iii) such Indebtedness is not at any time guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors and (iv) the applicable Loan

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Parties, the holders of such Indebtedness (or their Debt Representative) and the Administrative Agent and/or Collateral Agent shall be party to an Intercreditor Agreement providing that the Liens on the Collateral securing such obligations shall rank equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies).

“Permitted Equity Issuance” means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

“Permitted Holder” means (1) any of the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; provided that in the case of such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent held by such group and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Parent Company.

“Permitted Incremental Equivalent Debt” means Indebtedness issued, incurred or otherwise obtained by the Borrower and/or any Guarantor in respect of one or more series of senior unsecured notes, senior secured first lien or junior lien notes or subordinated notes (in each case whether issued in a public offering, Rule 144A or other private placement or bridge financing in lieu of the foregoing (and any Registered Equivalent Notes issued in exchange therefor) or otherwise), first lien or junior lien loans, unsecured or subordinated loans or secured or unsecured mezzanine Indebtedness that, in each case, if secured, will be secured by Liens on the Collateral on an equal priority (but without regard to the control of remedies) or junior priority basis with the Liens on Collateral securing the First Lien Obligations under this Agreement, and that are issued or made in lieu of Incremental Commitments; provided that:

(i) the terms of any such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith) or (B) if otherwise not consistent with the terms of the Closing Date Term Loans, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of the Closing Date Term Loans, except with respect to (1) covenants and other terms applicable to any period after the Latest Maturity Date of the Closing Date Term Loans or (2) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; provided that, notwithstanding anything to the contrary contained herein, if any such terms of such Indebtedness contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Revolving Facility, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of the Revolving Facility;

(ii) the aggregate principal amount of all Permitted Incremental Equivalent Debt shall not exceed the Available Incremental Amount at the time of incurrence (it being understood that for purposes of this clause (ii), references in Section 2.14(4)(c)(B) and Section 2.14(4)(c)(D) (other than the first proviso thereto) to Incremental Loans or Incremental Revolving Commitments shall be deemed to be references to Permitted Incremental Equivalent Debt);
(iii) such Permitted Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party;

(iv) in the case of Permitted Incremental Equivalent Debt that is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of the Borrower or any Restricted Subsidiary other than any asset constituting Collateral;

(v) if such Permitted Incremental Equivalent Debt is secured, such Permitted Incremental Equivalent Debt shall be subject to the applicable Intercreditor Agreement(s);

(vi) such Permitted Incremental Equivalent Debt (a) shall not mature earlier than the Original Term Loan Maturity Date and (b) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Permitted Incremental Equivalent Debt;

(vii) any mandatory prepayments of (I) any Permitted Incremental Equivalent Debt that comprises junior lien or unsecured notes or loans may not be made except to the extent that prepayments of such debt are not prohibited hereunder and to the extent required hereunder or pursuant to the terms of any Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the First Lien Obligations under this Agreement, first made or offered to the holders of the Term Loans constituting First Lien Obligations and any such Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the First Lien Obligations under this Agreement, and (II) any Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the First Lien Obligations under this Agreement in respect of events described in Section 2.05(2)(a), (b) and (d)(i) may be made on a pro rata basis, less than a pro rata basis or greater than a pro rata basis (but not greater than a pro rata basis as compared to any Class of Term Loans constituting First Lien Obligations with an earlier maturity date) with the Term Loans constituting First Lien Obligations; and

(viii) in the case of Permitted Incremental Equivalent Debt consisting of syndicated Dollar-denominated (or Euro-denominated) term loans secured by a Lien on the Collateral ranking pari passu with the First Lien Obligations under this Agreement, the All-In Yield of the Closing Date USD Term Loans (in the case of any such Dollar-denominated Permitted Incremental Equivalent Debt) or Closing Date Euro Term Loans (in the case of any such Euro-denominated Permitted Incremental Equivalent Debt) shall be subject to the adjustment in the manner set forth in the proviso to Section 2.14(5)(c) (to the extent then applicable), determined for purposes of this clause (viii) as if the Permitted Incremental Equivalent Debt were Incremental Term Loans;

provided, further, that “Permitted Incremental Equivalent Debt” may be incurred in the form of a bridge or other interim credit facility intended to be refinanced or replaced with long term indebtedness (so long as such credit facility includes customary “rollover provisions” that satisfy the requirements of clause (vi) above following such rollover), in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other credit facility, clause (vi) of the first proviso in this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

“Permitted Indebtedness” means Indebtedness permitted to be incurred in accordance with Section 7.02.
“Permitted Investments” means:

(1) any Investment in the Borrower or any Restricted Subsidiary;

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) (a) any Investment by the Borrower or any Restricted Subsidiary in any Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business if as a result of such Investment (i) such Person becomes a Restricted Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting a business unit, a line of business or a division of such Person, to, or is liquidated into, the Borrower or a Restricted Subsidiary (a “Permitted Acquisition”); provided that immediately after giving pro forma effect to any such Investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing; and

(b) any Investment held by such Person described in the preceding clause (a); provided that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each of the foregoing cases with respect to any such Investment or binding commitment in effect on the Closing Date in excess of $15.0 million, as set forth on Schedule 7.05, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; provided that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;

(6) any Investment acquired by the Borrower or any Restricted Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or
(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(10);

(8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding not to exceed (as of the date such Investment is made) the greater of (a) $270.0 million and (b) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company; provided that such Equity Interests will not increase the amount available forRestricted Payments under clause (3) of Section 7.05(a);

(10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.07(b) (except transactions described in clauses (2), (5), (9), (15) or (22) of such Section);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services, equipment or similar assets or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (i) $270.0 million and (ii) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation in connection therewith (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, independent contractors and members of management not in excess of $25.0 million outstanding at any one time, in the aggregate;
(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person’s purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (i) $230.0 million and (ii) 30.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable Law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;
(26) Investments made as part of, to effect or resulting from the Transactions;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Borrower and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director’s, officer’s, employee’s consultant’s or independent contractor’s acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of “Permitted Liens”;

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(33) any Investments if on a pro forma basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than 4.50 to 1.00 as of the last day of the Test Period most recently ended; and

(34) Permitted Bond Hedge Transactions.

“Permitted Junior Priority Refinancing Debt” means secured Indebtedness incurred by the Borrower and/or any Guarantor in the form of one or more series of junior lien secured notes, bonds or debentures or junior lien secured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); provided that (i) such Indebtedness is secured by a Lien on all or a portion of the Collateral on a junior priority basis to the Liens on Collateral securing the First Lien Obligations under this Agreement and is not secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the applicable requirements set forth in the provisos in the definition of “Credit Agreement Refinancing Indebtedness,” (iii) the holders of such Indebtedness (or their Debt Representative) and the Administrative Agent and/or the Collateral Agent shall be party to an Intercreditor Agreement providing that the Liens on Collateral securing such obligations shall rank junior to the Liens on Collateral securing the First Lien Obligations under this Agreement, and (iv) such Indebtedness is not at any time guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.
“Permitted Liens” means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

   (a) workers’ compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations,

   (b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

   (c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers’ acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords’, carriers’, warehousemen’s, materialmen’s, repairmen’s, construction, mechanics’ or other similar Liens, or landlord Liens specifically created by contract (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided, in each case, pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;
survey exceptions, encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or its ownership of its properties that were not incurred in connection with Indebtedness and that do not materially impair their use in the operation of the business of such Person and exceptions on Mortgage Policies insuring Liens granted on Mortgaged Properties;

(7) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clauses (A) or (B) of the definition of Permitted Ratio Debt, clause (4), (12)(b), (13), (14)(a)(A), (14)(a)(B), (15), (23) or (31) of Section 7.02(b) or, with respect to assumed or acquired Indebtedness not incurred in contemplation of the relevant acquisition, Disqualified Stock or Preferred Stock, clause (14)(b) of Section 7.02(b); provided that:

(a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (13) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness, Disqualified Stock or Preferred Stock incurred under clause (4), (12) or (13) of Section 7.02(b);

(b) Liens securing obligations relating to Indebtedness or Disqualified Stock permitted to be incurred pursuant to such clause (23) or (31) extend only to the assets of Subsidiaries that are not Guarantors;

(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; provided further that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;

(d) If any such Liens secure Indebtedness for borrowed money incurred pursuant to clauses (A) or (B) of the definition of Permitted Ratio Debt or such clauses (12)(b), (14)(a)(A) or (14)(a)(B), at the election of the Borrower, such Liens shall be subject to the applicable Intercreditor Agreement(s); and

(e) Liens securing obligations in respect of assumed or acquired Indebtedness, Disqualified Stock or Preferred Stock not incurred in contemplation of the relevant acquisition permitted to be assumed pursuant to such clause (14) are solely on acquired property or the assets of the acquired entity (other than after acquired property that is (A) affixed or incorporated into the property covered by such Lien, (B) after acquired property subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (C) the proceeds and products thereof).
(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (provided that any such Lien securing obligations in an aggregate amount on the Closing Date in excess of $15.0 million shall be set forth on Schedule 7.01);

(9) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary; provided that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary;

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary (provided that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Borrower or another Restricted Subsidiary permitted to be incurred in accordance with Section 7.02;

(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s accounts payable or similar obligations in respect of bankers’ acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower’s or any Restricted Subsidiary’s products, technologies or services) (i) that do not either (a) materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness and (ii) licenses or sublicenses granted by Holdings or any of its Restricted Subsidiaries to customers in the ordinary course of business;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;
(18) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility and Liens on any receivables transferred in connection with a Receivables Financing Transaction, including Liens on such receivables resulting from precautionary UCC filings or from recharacterization or any such sale as a financing or a loan;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (6), (7), (8), (9), (10) or this clause (19) of this definition; provided that: (a) such new Lien will be limited to all or part of the same property that was subject to the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and (b) the Indebtedness, Disqualified Stock or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness, Disqualified Stock or Preferred Stock described under such clauses (6), (7), (8), (9), (10) or this clause (19) at the time the original Lien became a Permitted Lien hereunder, plus (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, plus (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refinancing, refunding, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) $270.0 million and (ii) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a pro forma basis), which, at the election of the Borrower, shall be subject to the applicable Intercreditor Agreement(s); it being agreed that the Basket set forth in this clause (21) shall be deemed to be utilized to secure any secured Indebtedness incurred pursuant to Section 2.14 in connection with the utilization of the General Debt Basket Reallocation Amount;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;
(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; provided that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04;

(31) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) Liens in connection with any Sale-Leaseback Transaction(s);

(33) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor’s, sublessor’s, licensor’s or sublicensor’s interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;
(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower’s or such Subsidiary’s obligations under the terms of the lease for such premises;

(36) rights of set-off, banker’s liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; provided that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(39) Liens on all or any portion of the Collateral (but no other assets) to secure obligations in respect of (a) Indebtedness permitted to be incurred pursuant to Section 7.02; provided that after giving pro forma effect to the incurrence of the then proposed Indebtedness (and without netting any cash received from the incurrence of such proposed Indebtedness), (i) if such Indebtedness is secured on a (x) pari passu basis with the Liens that secure the First Lien Obligations under this Agreement (“Pari Passu Lien Debt”), the First Lien Net Leverage Ratio would be no greater than 4.25 to 1.00 or (y) junior basis to the Liens that secure the First Lien Obligations (“Junior Lien Debt”), the Secured Net Leverage Ratio would be no greater than 5.25 to 1.00, (ii) such Liens are in each case subject the applicable Intercreditor Agreement(s) and (iii) if such Liens secure syndicated Dollar-denominated or Euro-denominated term loans that are Pari Pass Lien Debt, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(c) (to the extent then applicable) as if such Indebtedness were Incremental Term Loans incurred pursuant to Section 2.14 and (b) any Refinancing Indebtedness in respect of Pari Pass Lien Debt or Junior Lien Debt (but subject to the foregoing clause (iii));

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by any title insurance reports or policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;
(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; provided that the covenants are complied with;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning, building and other similar land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(47) Liens securing obligations under Indebtedness outstanding pursuant to Section 7.02(b)(2) so long as such Liens are subject to the terms of the First Lien/Second Lien Intercreditor Agreement or other applicable Intercreditor Agreement;

(48) Liens on all or any portion of the Collateral (but no other assets) securing (i) Permitted Incremental Equivalent Debt, (ii) Permitted Equal Priority Refinancing Debt or (iii) Permitted Junior Priority Refinancing Debt, and, in each case, Liens securing any Refinancing Indebtedness in respect thereof;

(49) Liens on the assets of Restricted Subsidiaries that are not Loan Parties securing Indebtedness or other obligations of such Restricted Subsidiaries or any other Restricted Subsidiaries that are not Loan Parties that is permitted by Section 7.02 or otherwise not prohibited by this Agreement;

(50) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable Law; and

(51) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose.

For purposes of this definition, the term “Indebtedness” will be deemed to include interest and other obligations payable on or with respect to such Indebtedness.

“Permitted Parent” means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

“Permitted Ratio Debt” has the meaning specified in Section 7.02(a).

“Permitted Unsecured Refinancing Debt” means unsecured Indebtedness incurred by the Borrower and/or the Guarantors in the form of one or more series of senior unsecured notes, bonds or debentures or unsecured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); provided that (i) such Indebtedness satisfies the applicable requirements set forth in the provisos in the definition of “Credit Agreement Refinancing Indebtedness” and (ii) such Indebtedness is not at any time guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.
“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower’s or a Parent Company’s common equity sold by the Borrower or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained 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 of their respective ERISA Affiliates.

“Planned Expenditures” has the meaning specified in the definition of Excess Cash Flow.

“Platform” has the meaning specified in Section 6.02.

“Pledged Collateral” has the meaning specified in the Security Agreement.

“Preferred Stock” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

“Previously Absent Financial Maintenance Covenant” means, at any time (x) any financial maintenance covenant that is not contained in this Agreement at such time and (y) any financial maintenance covenant, a corresponding version of which is already contained in this Agreement at such time but with covenant levels and component definitions (to the extent relating to such corresponding version) that are less restrictive on Borrower and the Restricted Subsidiaries than those with respect to such financial maintenance covenant.

“Private-Side Information” means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

“Pro Forma Financial Statements” has the meaning specified in Section 5.05(1)(b).

“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 Commitments (or, if the Revolving Commitments have terminated in full, Revolving Exposure) and, if applicable and without duplication, Term Loans of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments (or, if the Revolving Commitments have terminated in full, Revolving Exposure) and, if applicable and without duplication, Term Loans at such time; provided that when used with respect to (i) Commitments, Loans, interest and fees under the Revolving Facility, “Pro Rata Share,” shall mean with respect to any Lender such Lender’s Applicable Percentage and (ii) Commitments, Loans and interest under any Term Facility, “Pro Rata Share,” shall mean, 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 Commitments and Term Loans of such Lender under such Term Facility at such time and the denominator of which is the amount of the aggregate Term Commitments and Term Loans under such Term Facility at such time.
“Public Company Costs” means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower’s or its Restricted Subsidiaries’ initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

“Public Lender” has the meaning specified in Section 6.02.

“Public-Side Information” means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of United States federal and state securities laws), and (ii) at any time on and after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of United States federal and state securities laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

“Purchase Money Obligations” means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

“Qualified Proceeds” means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

“Qualified Securitization Facility” means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Borrower) or (2) constituting a receivables financing facility.

“Qualifying IPO” means the issuance by the Borrower or any Parent Company of its common Equity Interests that are listed on a national exchange or publicly offered (other than a public offering pursuant to a registration statement on Form S-8) (including pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering)).
“Qualifying Lender” has the meaning specified in Section 2.05(1)(e)(D)(3).

“Quarterly Financial Statements” means the unaudited consolidated balance sheets and related consolidated combined statements of operations and cash flows of the Borrower and its Subsidiaries for the commencing April 3, 2017 and ended July 1, 2017.

“Rating Agencies” means Moody’s and S&P, or if Moody’s or S&P (or both) does not make a rating on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody’s or S&P (or both), as the case may be.

“Receivables Financing Transaction” means any transaction or series of transactions entered into by Holdings, the Borrower or any Restricted Subsidiary pursuant to which such party consummates a “true sale” of its receivables to a non-related third party on market terms as determined in good faith by the Borrower; provided that such Receivables Financing Transaction is (i) non-recourse to Holdings, the Borrower and the Restricted Subsidiaries and their assets, other than any recourse solely attributable to a breach by Holdings, the Borrower or any Restricted Subsidiary of representations and warranties that are customarily made by a seller in connection with a “true sale” of receivables on a non-recourse basis and (ii) consummated pursuant to customary contracts, arrangements or agreements entered into with respect to the “true sale” of receivables on market terms for similar transactions.

“Reference Rate” means (x) with respect to the calculation of the All-In Yield in the case of Loans of an applicable Class that includes a Eurodollar Rate floor, an interest rate per annum equal to the rate per annum equal to LIBOR, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, on such day for Dollar deposits with a term of three months, or if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on such day with a term of three months would be offered by the Administrative Agent’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m., London time, on such date, (y) with respect to the calculation of the All-In Yield in the case of Loans of an applicable Class that includes a Base Rate floor, the interest rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate” and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day) and (z) with respect to the calculation of the All-In Yield in the case of Loans of an applicable Class that includes a EURIBOR Rate floor, an interest rate per annum equal to the rate per annum equal to EURIBOR, as published on the applicable Reuters screen page (or such other commercially available source providing quotations of EURIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., Brussels time, on such day for Euro deposits with a term of three months, or if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Euros for delivery on such day with a term of three months would be offered by the Administrative Agent’s central European Branch to major banks in the European interbank market at their request at approximately 11:00 a.m., Brussels time, on such date.

“Refinance” has the meaning assigned in the definition of “Refinancing Indebtedness” and “Refinancing” and “Refinanced” have meanings correlative to the foregoing.
“Refinanced Debt” has the meaning assigned to such term in the definition of “Refinancing Indebtedness.”

“Refinancing Amendment” means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Other Loans or Other Commitments being incurred or provided pursuant thereto, in accordance with Section 2.15.

“Refinancing Indebtedness” means (x) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (y) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease (“Refinance”) any Indebtedness, Disqualified Stock or Preferred Stock, including any Refinancing Indebtedness, so long as:

(1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the “Refinanced Debt”), plus (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, plus (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the “Incremental Amounts”);

(2) such Refinancing Indebtedness (other than in the case of the Refinancing of any Indebtedness assumed or acquired in connection with any Permitted Acquisition, Investment or similar transaction so long as not created in contemplation thereof), has a:

(a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the Latest Maturity Date of the Loans);

(3) to the extent such Refinancing Indebtedness Refinances (a) Indebtedness that is contractually subordinated in right of payment to the Obligations (other than such Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 7.05, such Refinancing Indebtedness is subordinated to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt, (b) Junior Lien Debt, such Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Loans or the Guaranty thereof, in each case at least to the same extent as the applicable Refinanced Debt or pursuant to an Intercreditor Agreement, in each case, unless such Refinancing Indebtedness is secured by a Lien that is not so subordinated that is permitted by Section 7.01, or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively.

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(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property);

provided that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refines Indebtedness or Disqualified Stock of the Borrower;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refines Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

provided further that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under clauses (2) and (30) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Junior Indebtedness (other than Junior Indebtedness assumed or acquired in an Investment, acquisition or similar transaction and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (2) of this definition).

“Refunding Capital Stock” has the meaning specified in Section 7.05(b)(2).

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

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Rejection Notice” has the meaning specified in Section 2.05(2)(g).

“Related Business Assets” means assets (other than Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Restricted Subsidiary.
“Related Indemnified Person” of an Indemnitee means (1) any controlling Person or controlled Affiliate of such Indemnitee, (2) the respective directors, officers, partners, employees, advisors or successors of such Indemnitee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnitee or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling Person or such controlled Affiliate; provided that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or the syndication of the Facilities. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Related Person” means, with respect to any Person, (a) any Affiliate of such Person, (b) the respective directors, officers, partners, employees, advisors, agents, trustees and other representatives of such Person or any of its Affiliates and (c) the successors and permitted assigns of such Person or any of its Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into or migration through the Environment.

“Replaced Loans” has the meaning specified in Section 10.01.

“Replacement Loans” has the meaning specified in Section 10.01.

“Reportable Event” means, with respect to any Pension 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.

“Repricing Transaction” means (i) the prepayment, refinancing, substitution, replacement or conversion of all or a portion of any Closing Date Term Loans with the incurrence by the Borrower or any other Subsidiary of any senior secured first lien term loans under any credit facilities which reduces the All-In Yield of such Indebtedness relative to the Closing Date Term Loans so repaid, refinanced, substituted, replaced or converted (as determined in good faith by the Borrower) and (ii) any amendment, amendment and restatement or other modification to this Agreement which reduces the All-In Yield applicable to the Closing Date Term Loans (as determined in good faith by the Borrower), excluding, in each case, any such reductions in connection with (a) a Change of Control or (b) a Qualifying IPO.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Loans, a Committed Loan Notice and (b) with respect to an L/C Credit Extension, a L/C Application.

“Required Facility Lenders” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility or Facilities (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations under such Facility or Facilities being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility or Facilities;
provided that the unused Commitments of, and the portion of the Total Outstandings under such Facility or Facilities held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Facility Lenders; provided, further, that, to the same extent specified in Section 10.07(i) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Facility Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders.

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Revolving Commitments; provided that the unused Term Commitment and unused Revolving Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided, further, that the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders.

"Responsible Officer" means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such 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 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. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

"Restricted Investment" means any Investment other than any Permitted Investment(s).

"Restricted Payment" has the meaning specified in Section 7.05.

"Restricted Subsidiary" means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; provided that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Restricted Subsidiary for purposes of Section 8.01(5), (6) or (7); provided further that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of “Restricted Subsidiary.” Wherever the term “Restricted Subsidiary” is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a pro forma basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower (unless such transaction would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a pro forma basis in accordance with this Agreement).
“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period, made by each of the Revolving Lenders pursuant to Section 2.01(2).

“Revolving Commitment” means, as to each Revolving Lender, its obligation to (1) make Revolving Loans to the Borrower pursuant to Section 2.01(2) and (2) purchase participations in L/C Obligations in respect of Letters of Credit in an aggregate principal amount at any one time outstanding not to exceed the amount specified opposite such Lender’s name on Schedule 2.01 under the caption “Revolving Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Revolving Commitments of all Revolving Lenders as of the Closing Date is $500.0 million, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

“Revolving Commitment Increase” has the meaning specified in Section 2.14(1).

“Revolving Exposure” means, as to each Revolving Lender, the sum of the amount of the Outstanding Amount of such Revolving Lender’s Revolving Loans and its Applicable Percentage of the amount of the L/C Obligations at such time.

“Revolving Extension Request” has the meaning provided in Section 2.16(2).

“Revolving Extension Series” has the meaning provided in Section 2.16(2).

“Revolving Facility” means, at any time, the aggregate amount of the Revolving Commitments at such time.

“Revolving Lender” means, at any time, any Lender that has a Revolving Commitment at such time or, if Revolving Commitments have terminated, Revolving Exposure.

“Revolving Loan” has the meaning specified in Section 2.01(2) and includes Revolving Loans under the Closing Date Revolving Facility, Incremental Revolving Loans, Other Revolving Loans and Loans made pursuant to Extended Revolving Commitments.

“Revolving Note” means a promissory note of the Borrower payable to any Revolving Lender or its registered assigns, in substantially the form of Exhibit B-3 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Lender resulting from the Revolving Loans made by such Revolving Lender.

“Rupees” means the lawful currency of the Republic of India.


“Sale-Leaseback Transaction” means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“Same Day Funds” means disbursements and payments in immediately available funds.
“Sanctions” has the meaning specified in Section 5.17.

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

“Second Lien Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent under the Second Lien Credit Documents, or any successor administrative agent and/or collateral agent (or other Debt Representative), as the case may be, under the Second Lien Credit Documents.

“Second Lien Credit Agreement” means that certain Second Lien Credit Agreement dated as of the Closing Date by and among Holdings, the Borrower, the lenders party thereto in their capacities as lenders thereunder, the Second Lien Administrative Agent, as agent and the other agents party thereto, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more indentures, credit agreements or other agreements (in each case with the same or new lenders, noteholders, institutional investors or agents), including any indentures or credit agreements that replace, refund, supplement, extend, renew, restate, amend, modify or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent permitted by this Agreement and the First Lien/Second Lien Intercreditor Agreement. Unless otherwise expressly provided herein, references to provisions of the Second Lien Credit Agreement, including references to definitions of terms in (or meanings assigned to terms in) the Second Lien Credit Agreement and references to Sections of the Second Lien Credit Agreement, shall be deemed to refer to (x) such provisions of the Second Lien Credit Agreement as in effect on the Closing Date or (y) if the Second Lien Credit Agreement has been amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced, substantially similar or corresponding provisions of the Second Lien Credit Agreement as in effect from time to time.

“Second Lien Credit Documents” means the Second Lien Credit Agreement, the First Lien/Second Lien Intercreditor Agreement and the other Loan Documents (as defined in the Second Lien Credit Agreement) (or in each case, any comparable term).

“Second Lien Credit Facility” means the term loan facility outstanding under the Second Lien Credit Agreement.

“Second Lien Incremental Usage Amount” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Loans” (as defined in the Second Lien Credit Agreement) outstanding pursuant to clause (A)(1) of Section 2.14(4)(c) of the Second Lien Credit Agreement and (y) the aggregate principal amount of “Permitted Incremental Equivalent Debt” (as defined in the Second Lien Credit Agreement) outstanding pursuant to clause (ii) of the definition of “Permitted Incremental Equivalent Debt” (as defined in the Second Lien Credit Agreement) in reliance on the “Available Incremental Amount” (as defined in the Second Lien Credit Agreement) available under clause (A)(1) of Section 2.14(4)(c) of the Second Lien Credit Agreement (any such Indebtedness described in clauses (x) and (y), the “Second Lien Incremental Usage Amount Debt”).

“Second Lien Initial Term Loans” has the meaning specified in the preliminary statements to this Agreement.

“Second Lien Term Loans” has the meaning assigned to the term “Loans” in the Second Lien Credit Agreement.
“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between Holdings, the Borrower or any Restricted Subsidiary and a Cash Management Bank; and designated in writing by the Borrower to the Administrative Agent as a “Secured Cash Management Agreement.”

“Secured Hedge Agreement” means any Hedge Agreement with respect to Hedging Obligations permitted under Section 7.02 that is (a) entered into by and between any Loan Party or Restricted Subsidiary and any Hedge Bank and (b) designated in writing by the Borrower to the Administrative Agent as a “Secured Hedge Agreement.”

“Secured Indebtedness” means any Indebtedness of the Borrower or any Restricted Subsidiary secured by a Lien.

“Secured Net Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding as of the last day of such Test Period, minus the Unrestricted Cash Amount on such last day to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

“Secured Parties” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Issuing Bank, each Hedge Bank, each Cash Management Bank, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(2) or 9.07.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Securitization Assets” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“Securitization Facility” means any transaction or series of securitization financings that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“Securitization Subsidiary” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.
“Security Agreement” means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

“Shekels” means the lawful currency of the State of Israel.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

“Similar Business” means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date.

“Solicited Discount Proration” has the meaning specified in Section 2.05(1)(e)(D)(3).

“Solicited Discounted Prepayment Amount” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Solicited Discounted Prepayment Notice” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(1)(e)(D) substantially in the form of Exhibit L.

“Solicited Discounted Prepayment Offer” means the written offer by each Lender, substantially in the form of Exhibit O, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“Solicited Discounted Prepayment Response Date” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date:

1. the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,

2. the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured,

3. such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and

4. such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

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The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

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

“Specified Discount” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Discount Prepayment Amount” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Discount Prepayment Notice” means a written notice of the Borrower’s Offer of Specified Discount Prepayment made pursuant to Section 2.05(1)(e)(B) substantially in the form of Exhibit N.

“Specified Discount Prepayment Response” means the written response by each Lender, substantially in the form of Exhibit P, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Discount Proration” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Representations” means those representations and warranties made in Sections 5.01(1) (with respect to the organizational existence of the Loan Parties only), 5.01(2)(b), 5.02(1), 5.02(2)(a), 5.04, 5.13, 5.16, the last sentence of Section 5.17 (as it relates only to the use of proceeds of the Facilities not violating the USA PATRIOT Act or OFAC), and Section 5.18.

“Specified Transaction” means:

1. solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Borrower, in each case, in connection with an acquisition or Investment,

2. any designation of operations or assets of the Borrower or a Restricted Subsidiary as discontinued operations (as defined under GAAP) (but if such operations are designated as discontinued due to the fact that they are being held for sale or are subject to an agreement to dispose of such operations, if selected by the Borrower in its sole discretion, only when and to the extent such operations are actually disposed of),

3. any Permitted Acquisition or any Investment that results in a Person becoming a Restricted Subsidiary,

4. any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,

5. any purchase or other acquisition of a business of any Person, of assets constituting a business unit, line of business or division of any Person,
(6) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Restricted Subsidiary during the Test Period,

(8) any borrowing of Incremental Loans or Permitted Incremental Equivalent Debt (or establishment of Incremental Commitments), or

(9) any Restricted Payment or other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a pro forma basis;

provided that any of the foregoing shall not constitute a Specified Transaction so long as the fair market value or impact, as applicable, thereof shall not exceed $50.0 million.

“Spot Rate” means, on any day, for purposes of determining the Dollar equivalent, Euro equivalent or Available LC Currency equivalent of any other currency, the rate at which such other currency may be exchanged into Dollars, Euros, or the Available LC Currency, as applicable, at the time of determination on such day on the Reuters WRLD Page for such currency. In the event that such rate does not appear on any Reuters WRLD Page, the Spot Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such an agreement, such Spot Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Spot Rate, on such date for the purchase of Dollars, Euros, or Available LC Currency, as applicable, for delivery two Business Days later, provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

“Sterling” means the lawful currency of the United Kingdom.

“Submitted Amount” has the meaning specified in Section 2.05(1)(e)(C)(1).

“Submitted Discount” has the meaning specified in Section 2.05(1)(e)(C)(1).

“Subsidiary” means, with respect to any Person:

(1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and
any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor” means any Guarantor other than Holdings.

“Successor Borrower” has the meaning specified in Section 7.03(4).

“Successor Holdings” has the meaning specified in Section 7.03(5).

“Supplemental Administrative Agent” and “Supplemental Administrative Agents” have the meanings specified in Section 9.15(1).

“Swap Obligation” has the meaning specified in the definition of “Excluded Swap Obligation.”

“Tax” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

“Tax Distributions” has the meaning specified in Section 7.05(b)(14)(c).

“Tax Group” has the meaning specified in Section 7.05(b)(14)(b).

“Tax Indemnitee” has the meaning specified in Section 3.01(5).

“Term Borrowing” means a Borrowing of any Term Loans.

“Term Commitment” means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment, (iv) an Extension Amendment or (v) an amendment in respect of Replacement Loans. The initial amount of each Term Lender’s Term Commitment is specified on Schedule 2.01 under the caption “Closing Date USD Term Loan Commitment” or “Closing Date Euro Term Loan Commitment”, as applicable, or, otherwise, in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption), Incremental Amendment, Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans pursuant to which such Lender shall have assumed its Commitment, as the case may be.

“Term Facility” means any Facility consisting of Term Loans of a single Class and/or Term Commitments with respect to such Class of Term Loans.

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“Term Lender” means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

“Term Loan” means any Closing Date Term Loan, Incremental Term Loan, Other Term Loan, Extended Term Loan or Replacement Loan, as the context may require.

“Term Loan Extension Request” has the meaning provided in Section 2.16(1).

“Term Loan Extension Series” has the meaning provided in Section 2.16(1).

“Term Loan Increase” has the meaning specified in Section 2.14(1).

“Term Note” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B-1 or Exhibit B-2 hereto, evidencing the aggregate indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“Termination Conditions” means, collectively, (a) the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations not then due and (ii) Obligations under Secured Hedge Agreements and Secured Cash Management Agreements) and (b) the termination of the Commitments and the termination or expiration of all Letters of Credit under this Agreement (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized on terms reasonably acceptable to the applicable Issuing Bank, backstopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank).

“Test Period” in effect at any time means (x) for purposes of (a) the definition of “Applicable Rate,” (b) Section 2.05(2)(a) and (c) the Financial Covenant (other than for the purpose of determining pro forma compliance with the Financial Covenant), the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which, subject to Section 1.07(1), financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 6.01(1) or (2), as applicable and (y) for all other purposes in this Agreement, the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each such quarter or fiscal year in such period are internally available (as determined in good faith by the Borrower) (it being understood that for purposes of determining pro forma compliance with the Financial Covenant, if no Test Period with an applicable level cited in the Financial Covenant has passed, the applicable level shall be the level for the first Test Period cited in the Financial Covenant with an indicated level); provided that, prior to the first date that financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2), the Test Period in effect shall be the period of four consecutive full fiscal quarters of the Borrower ended prior to the Closing Date for which financial statements would have been required to be delivered hereunder had the Closing Date occurred prior to the end of such period.

“Threshold Amount” means $100.0 million.

“Total Assets” means, at any time, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower) (and, in the case of any determination relating to any Specified Transaction, on a pro forma basis including any property or assets being acquired in connection therewith).
"Total Net Leverage Ratio" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Test Period, minus the Unrestricted Cash Amount on such last day to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and L/C Obligations.

"Traded Securities" means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

"Transaction Document" means each of (a) that certain Transition Services Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation (as amended by the First Amendment to the Transition Services Agreement, dated as of August 31, 2017) (the "TSA"), (b) that certain letter agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (c) that certain Intellectual Property Matters Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (d) that certain Security Innovation Alliance Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (e) that certain Software License Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (f) that certain Commercial Services Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (g) that certain Embedded Software Distribution and Services Agreement, dated as of October 1, 2012, among the Borrower, McAfee Ireland Limited (successor in interest to McAfee Security S.a.r.l.), McAfee Co. Ltd., and Intel Corporation (as amended by the First amendment thereto dated May 12, 2013, the Second Amendment thereto dated June 24, 2013, the Third Amendment thereto dated June 24, 2013, the Fourth Amendment thereto dated June 24, 2013, the Fifth Amendment thereto dated January 28, 2016, the Sixth Amendment thereto dated March 15, 2016, and the Seventh Amendment thereto dated April 3, 2017, (h) that certain Master Purchase Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (i) that certain Intellectual Property Assignment, dated as of April 3, 2017 between Foundation Technology Worldwide LLC and Intel Corporation, (j) that certain Corporate Non-Disclosure Agreement for Restricted Secret Information, dated as of April 3, 2017 between Foundation Technology Worldwide LLC and its Affiliates on the one hand and Intel Corporation and its Affiliates on the other hand, (k) that certain Non-Disclosure Agreement for Restricted Secret Information, dated as of April 3, 2017 between Borrower and Intel Corporation, and (l) that certain Side Letter to the Subscription Agreement, dated as of April 2, 2017 among Foundation Technology Worldwide LLC, Manta Holdings, L.P. and Intel Corporation.

"Transaction Expenses" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options or restricted stock.

"Transactions" means, collectively, (a) dividends and distributions to be applied to the repayment, redemption or repurchase of (i) the Promissory Note, dated as of April 3, 2017, among Foundation Technology Worldwide LLC and Intel Overseas Funding Corporation and (ii) the Redemption Units (as defined in the Amended and Restated Limited Liability Company Agreement of Foundation Technology Worldwide LLC, a Delaware limited liability company) issued to Manta Holdings, L.P.; (b) the repayment, redemption or repurchase of the Revolving Credit Note, dated as of April 3, 2017, among McAfee, LLC and Intel Overseas Funding Corporation (the repayment, redemption
or repurchase transactions contemplated by clause (a) and this clause (b), the “Refinancing”), (c) the payment of Transaction Expenses, (d) to the extent of proceeds remaining after the transactions as contemplated by clauses (a), (b) and (c) of this definition, additional dividends and distributions paid to Foundation Technology Worldwide LLC and further to its direct and indirect members (the “Parent Distribution”) and (e) transactions related or incidental to, or in connection with, such transactions.

“Treasury Capital Stock” has the meaning assigned to such term in Section 7.05(b)(2)(a).

“TSA” has the meaning assigned to such term in the definition of “Transaction Document”.

“Type” means, with respect to a Loan, its character as a Base Rate Loan, a Eurodollar Rate Loan or a EURIBOR Rate Loan.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the perfection or priority of any Lien on or otherwise with regard to any item or items of Collateral.

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

“United States Tax Compliance Certificate” has the meaning specified in Section 3.01(3)(b)(iii).

“Unreimbursed Amount” has the meaning specified in Section 2.03(3)(a).

“Unrestricted Cash Amount” means, on any date of determination, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) are restricted in favor of the Facilities (which may also secure other Indebtedness secured by a pari passu or junior Lien basis with the Facilities).

“Unrestricted Subsidiary” means:

(1) any Subsidiary of the Borrower which at the time of determination is an Unrestricted Subsidiary (as designated by the Borrower, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Borrower may designate:

(a) any Subsidiary of the Borrower (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Borrower or any Subsidiary (other than solely any Subsidiary of the Subsidiary to be so designated); provided that:

(i) such designation shall be deemed an Investment;

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(ii) each of (i) the Subsidiary to be so designated and (ii) its Subsidiaries has not, at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Borrower or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary); and

(iii) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(b) any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that:

(i) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(ii) the Borrower is in compliance with the Financial Covenant (whether or not then in effect) calculated on a pro forma basis as of the last day of the most recently ended Test Period.

Any such designation by the Borrower will be notified by the Borrower to the Administrative Agent by promptly filing with the Administrative Agent an Officer’s Certificate certifying that such designation complied with the foregoing provisions. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time.

“U.S. Lender” means any Lender that is not a Foreign Lender.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“USD Term Lender” means a Term Lender with a Closing Date USD Term Loan Commitment or an outstanding USD Term Loan.

“USD Term Loan” means each Term Loan denominated in Dollars.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, multiplied by the amount of such payment, by
provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness (the “Applicable Indebtedness”), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of such determination will be disregarded.

“wholly owned” means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors’ qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

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

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

“Withholding U.S. Branch” means a U.S. branch of a non-U.S. bank treated as a U.S. person for purposes of Treasury Regulations Section 1.1441-1 and described in Treasury Regulations Section 1.1441-1(b)(2)(iv) that agrees, on IRS Form W-8IMY or such other form prescribed by the Treasury or the IRS, to accept responsibility for all U.S. federal income tax withholding and information reporting with respect to payments made to the Administrative Agent for the account of Lenders by or on behalf of any Loan Party under the Loan Documents.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

“Yen” means the lawful currency of Japan.

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:

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

(2) 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.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

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

(5) 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.
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.”

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.

The word “or” is not intended to be exclusive unless expressly indicated otherwise.

With respect to any Default or Event of Default, the words “exists,” “is continuing” or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived. If any Default or Event of Default occurs due to (i) the failure by any Loan Party to take any action by a specified time, such Default or Event of Default shall be deemed to have been cured at the time, if any, that the applicable Loan Party takes such action or (ii) the taking of any action by any Loan Party that is not then permitted by the terms of this Agreement or any other Loan Document, such Default or Event of Default shall be deemed to be cured on the earlier to occur of (x) the date on which such action would be permitted at such time to be taken under this Agreement and the other Loan Documents and (y) the date on which such action is unwound or otherwise modified to the extent necessary for such revised action to be permitted at such time by this Agreement and the other Loan Documents. If any Default or Event of Default occurs that is subsequently cured (a “Cured Default”), any other Default or Event of Default resulting from the making or deemed making of any representation or warranty by any Loan Party or the taking of any action by any Loan Party or any Subsidiary of any Loan Party, in each case which subsequent Default or Event of Default would not have arisen had the Cured Default not occurred, shall be deemed to be cured automatically upon, and simultaneous with, the cure of the Cured Default.

Notwithstanding anything to the contrary in this Section 1.02(9), an Event of Default (the “Initial Default”) may not be cured pursuant to this Section 1.02(9):

(a) if the taking of any action by any Loan Party or Subsidiary of a Loan Party that is not permitted during, and as a result of, the continuance of such Initial Default (including, without limitation, a Credit Extension hereunder at a time when the conditions thereto have not been met and the application of proceeds thereof) directly results in the cure of such Initial Default and the applicable Loan Party or Subsidiary had actual knowledge at the time of taking any such action that the Initial Default had occurred and was continuing,

(b) in the case of an Event of Default under Section 8.01(9) [Invalidity of Loan Documents] or (10) [Collateral Documents (Loss of Lien)] that directly results in material impairment of the rights and remedies of the Lenders, Collateral Agent and Administrative Agent under the Loan Documents and that is incapable of being cured, or

(c) in the case of an Event of Default under Section 8.01(3) [Affirmative Covenant Event of Default] arising due to the failure to perform or observe Section 6.07 [Maintenance of Insurance] that directly results in a material adverse effect on the ability of the Borrower and the other Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which the Borrower or any of the other Loan Parties is a party; or
in the case of an Initial Default for which (i) the Borrower failed to give notice to the Agent and the Lenders of such Initial Default in accordance with Section 6.03(1) of this Agreement and (ii) the Borrower had actual knowledge of such failure to give such notice.

For purposes hereof, unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

SECTION 1.03 Accounting Terms. 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, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any of its Subsidiaries at “fair value,” as defined therein and (ii) unless the Borrower has requested an amendment pursuant to the second paragraph of the definition of “GAAP” with respect to the treatment of operating leases and Capitalized Lease Obligations under GAAP (or IFRS) and until such amendment has become effective, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

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, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) 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 and Timing of Payment and Performance. Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) 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 (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day.
SECTION 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.07; provided that notwithstanding anything to the contrary in clauses (2), (3), (4) or (5) of this Section 1.07, when calculating the First Lien Net Leverage Ratio for purposes of (a) the definition of “Applicable Rate,” (b) Section 2.05(2)(a) and (c) the Financial Covenant (other than for the purpose of determining pro forma compliance with the Financial Covenant), the events described in this Section 1.07 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect; provided however that voluntary prepayments made pursuant to Section 2.05(1) during any fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to Section 2.05(2)(a) for any prior fiscal year) shall be given pro forma effect after such fiscal year-end and prior to the time any mandatory prepayment pursuant to Section 2.05(2)(a) is due for purposes of calculating the First Lien Net Leverage Ratio for purposes of determining the ECF Percentage for such mandatory prepayment, if any.

(2) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Consolidated EBITDA or Total Assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.07; provided that with respect to any pro forma calculations to be made in connection with any acquisition or investment in respect of which financial statements for the relevant target are not available for the same Test Period for which internal financial statements of the Borrower are available, the Borrower shall determine such pro forma calculations on the basis of the available financial statements (even if for differing periods) or such other basis as determined on a commercially reasonable basis by the Borrower.

(3) Whenever pro forma effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from or relating to any Specified Transaction (including the Original Transactions and, for the avoidance of doubt, acquisitions occurring prior to the Closing Date) which is being given pro forma effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a
public target’s compliance costs with public company requirements), whether prior to or following the Closing Date, net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial pro forma calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; provided that (a) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (b) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than eighteen (18) months after the date of such Specified Transaction (or actions undertaken or implemented prior to the consummation of such Specified Transaction) and (c) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a pro forma adjustment or otherwise, with respect to such period; provided, that the aggregate amount of any such “run rate” adjustments added back pursuant to this Section 1.07 and clause (l) of the definition of “Consolidated EBITDA” shall not exceed in the aggregate 25% of Consolidated EBITDA for such period (as calculated before giving effect to any such “run rate” adjustments).

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced and, for the avoidance of doubt, in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on a ratio Basket based on the Interest Coverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio, such ratio(s) shall be calculated without regard to the incurrence of any Indebtedness under any revolving facility in connection therewith), (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Interest Coverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period.

(5) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or applicable Restricted Subsidiary may designate.
Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, at the election of the Borrower, no pro forma effect shall be given to any discontinued operations (and the Consolidated EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) on or prior to the relevant date of determination.

Notwithstanding anything to the contrary contained herein, in the event any item of Indebtedness (including any Class of Indebtedness incurred under this Agreement (including pursuant to Section 2.14)), Disqualified Stock or Preferred Stock, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (or any of the foregoing in a single transaction or a series of substantially concurrent related transactions) meets the criteria of one or more than one of the categories of Baskets under this Agreement (including within any defined terms), including any financial ratio based Baskets (including the Interest Coverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio), unless otherwise expressly provided in this Agreement, the Borrower may, in its sole discretion, divide and classify and later re-divide and reclassify on or more occasions (based on circumstances existing on the date of any such re-division and reclassification) any such item of Indebtedness (including any Class of Indebtedness incurred under this Agreement (including pursuant to Section 2.14)), Disqualified Stock or Preferred Stock, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action, in whole or in part, among one or more than one categories of Baskets under this Agreement, and (ii) availability and utilization of any category of financial ratio based Baskets (i.e., incurrence-based Baskets) with respect to any covenant (and including clause (D) of the Available Incremental Amount for purposes hereof) shall first be calculated without giving effect to the amount or portion of any item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action to be utilized under any other category of Baskets under such covenant (or the Available Incremental Amount, as applicable) at such time of determination (including at the time of any initial division and classification and any later re-divisions and reclassifications) and thereafter, availability and utilization of any category of Baskets that are not financial ratio based (including all Baskets based on fixed Dollar amounts or a percentage of Consolidated EBITDA or total assets under such covenant (including, as applicable, under clause (A)(1) of the Available Incremental Amount)) shall be calculated; provided that all Indebtedness (x) incurred hereunder on the Closing Date and (y) represented by the Indebtedness pursuant to the Second Lien Credit Documents and related Guarantees on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (2), respectively, and may not be reclassified. Each item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action will be deemed to have been incurred, issued, made or taken first, to the extent available, pursuant to any available categories of financial ratio based Baskets (including the Interest Coverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio) as set forth above prior to any other category of Baskets. If any item of Indebtedness (including any Class of Indebtedness incurred under this Agreement (including pursuant to Section 2.14)), Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (or any portion of the foregoing) previously divided and classified (or re-divided and reclassified) as set forth above under any category of non-financial ratio based Baskets could subsequently be re-divided and reclassified under a category of

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financial ratio based Baskets (including the Interest Coverage Ratio, Senior Secured Net Leverage Ratio or Total Net Leverage Ratio (including clause D of the Available Incremental Amount)), such re-division and reclassification shall be deemed to occur automatically and item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (or any portion of the foregoing) shall cease to be deemed made or outstanding for purposes of any category of Baskets that are not financial ratio based.

(9) If any item of Indebtedness, Disqualified Stock or Preferred Stock, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (any of the foregoing in a single transaction or a series of substantially concurrent related transactions) is incurred, issued, taken or consummated in reliance on categories of Baskets measured by reference to a percentage of Consolidated EBITDA, and any Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (including in connection with refinancing thereof) would subsequently exceed the applicable percentage of Consolidated EBITDA if calculated based on the Consolidated EBITDA on a later date (including the date of any refinancing), such percentage of Consolidated EBITDA will not be deemed to be exceeded (and in the case of refinancing any Indebtedness, Disqualified Stock or Preferred Stock, to the extent the principal amount or the liquidation preference of such newly incurred or issued Indebtedness, Disqualified Stock or Preferred Stock does not exceed the maximum principal amount, liquidation preference or amount of Refinancing Indebtedness in respect of the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased).

(10) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (a) calculating the availability under any Basket or ratio in this Agreement (including the Available Incremental Amount) or compliance with any provision of in this Agreement in connection with any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness (including pursuant to Section 2.14), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments), in each case, at the option of the Borrower (the Borrower’s election to exercise such option, an “LCT Election”), the date of determination for availability under any such Basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any (or any type of) continuing Default or Event of Default and satisfaction of any representations and warranties)) in this Agreement shall be deemed to be the date (the “LCT Test Date”) the definitive agreements for such Limited Condition Transaction are entered into (or, if applicable, the date of delivery of an irrevocable notice, declaration of a Restricted Payment or similar event), and if, after giving pro forma effect to the Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness (including pursuant to Section 2.14), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments) and any related pro forma adjustments, the Borrower or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued or incurred at the LCT Test Date or at any time thereafter); provided, that (a) if financial statements for one or more subsequent fiscal quarters shall have become available, the Borrower may elect, in its sole discretion, to re-determine all such ratios, tests or baskets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be deemed to be the applicable LCT Test Date for purposes of such ratios, tests or baskets, and (b) except as contemplated in the foregoing clause (a), compliance with such ratios, tests or baskets (and any related requirements and conditions) shall not be determined or tested at any time after the applicable LCT Test Date for such Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments).
For the avoidance of doubt, if the Borrower has made an LCT Election, (1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time after the LCT Test Date have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA or total assets of the Borrower or the Person subject to such Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations; (2) if any related requirements and conditions (including as to the absence of any (or any type of) continuing Default or Event of Default and satisfaction of any representations and warranties) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time after the LCT Test Date not have been complied with or satisfied (including due to the occurrence or continuation of any Default or Event of Default or failure to satisfy any representations and warranties), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing and such representations and warranties shall be deemed to have been satisfied); and (3) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or date for redemption, purchase or repayment specified in an irrevocable notice or declaration for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Transaction.

SECTION 1.08 Available Amount Transaction. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount specified in clause (3) of Section 7.05(a) immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must be permitted under clause (3) of Section 7.05(a) as so calculated.

SECTION 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

SECTION 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the Dollar equivalent amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

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(2) For purposes of determining the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(3) Notwithstanding anything herein to the contrary, at the election of the Borrower (subject to the consents required under the definition of “Acceptable Non-USD Currency”), any Class of Revolving Loans or Revolving Commitments incurred or established under this Agreement may be denominated in (and any existing Class of Revolving Loans or Revolving Commitments may be modified to add the ability to borrow in) any Acceptable Non-USD Currency. If any Class of Revolving Loans or Revolving Commitments denominated in an Acceptable Non-USD Currency is incurred or established (or any existing Class of Revolving Loans or Revolving Commitments is modified to add the ability to borrow in any Acceptable Non-USD Currency), then the Borrower and the Administrative Agent may, without the consent of any other Loan Party, Agent, Lender, Issuing Bank or other party, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to give effect to such denomination in an Acceptable Non-USD Currency.

(4) Notwithstanding anything to the contrary herein, for purposes of determining the relative outstanding principal amounts of any Loans denominated in any currency other than Dollars (including any Euro Term Loans) in connection with (i) determining whether the Required Lenders or Required Facility Lenders shall have consented to any amendment, waiver, modification or supplement hereunder or (ii) the application of any mandatory prepayments of Loans hereunder, such determination shall be based on the Dollar-equivalent principal amounts of such Loans based on the Spot Rate as of the applicable date of determination.

SECTION 1.11 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Amount of the stated amount of such Letter of Credit in effect at such time after giving effect to any automatic reductions to such stated amount pursuant to the terms of the applicable Letter of Credit after the occurrence of any applicable condition (including the expiration of any applicable period); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuing Bank Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Amount of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Article II

The Commitments and Borrowings

SECTION 2.01 The Loans.

(1) Term Borrowings.

(a) Subject to the terms and conditions set forth in Section 4.01 hereof, each USD Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date USD Term Loans denominated in Dollars in an aggregate principal amount equal to such USD Term Lender’s Closing Date USD Term Loan Commitment on the Closing Date. Amounts borrowed under this Section 2.01(1) and repaid or prepaid may not be reborrowed. The Closing Date USD Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.
Subject to the terms and conditions set forth in Section 4.01 hereof, each Euro Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date Euro Term Loans denominated in Euros in an aggregate principal amount equal to such Euro Term Lender’s Closing Date Euro Term Loan Commitment on the Closing Date. Amounts borrowed under this Section 2.01(1) and repaid or prepaid may not be reborrowed. The Closing Date Euro Term Loans shall be EURIBOR Rate Loans.

(2) Revolving Borrowings. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans denominated in Dollars from its applicable Lending Office (each such loan, a “Revolving Loan”) to the Borrower from time to time, on any Business Day during the period from the Closing Date until the Maturity Date, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender’s Revolving Commitment; provided that after giving effect to any Revolving Borrowing, the aggregate Outstanding Amount of the Revolving Loans of any Lender plus such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender’s Revolving Commitment. Within the limits of each Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(2), prepay under Section 2.05 and reborrow under this Section 2.01(2). Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

SECTION 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Term Borrowing, each Revolving Borrowing, each conversion of Term Loans or Revolving Loans from one Type to the other, and each continuation of Eurodollar Rate Loans or EURIBOR Rate Loans shall be made upon the Borrower’s irrevocable notice, on behalf of the Borrower, to the Administrative Agent (provided that the notice in respect of the initial Credit Extension, or in connection with any Permitted Acquisition or other transaction permitted under this Agreement, may be conditioned on the closing of such Permitted Acquisition or other transaction, as applicable), which may be given by: (A) telephone or (B) a Committed Loan Notice; provided that any telephonic notice by the Borrower must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than (a) 1:00 p.m., New York time, three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurodollar Rate Loans or EURIBOR Rate Loans or any conversion of Base Rate Loans to Eurodollar Rate Loans and (b) 1:00 p.m., New York time, on the requested date of any Borrowing of Base Rate Loans or any conversion of Eurodollar Rate Loans to Base Rate Loans; provided that the notice referred to in subclause (a) above may be delivered not later than 1:00 p.m., New York time, one (1) Business Day prior to the Closing Date in the case of the Closing Date Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(1) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $1.0 million or a whole multiple amount of $250,000 in excess thereof. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of, conversion to or continuation of EURIBOR Rate Loans shall be in a principal amount of €1.0 million or a whole multiple amount of €250,000 in excess thereof. Except as provided in Sections 2.03(3), 2.14, 2.15 and 2.16, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple amount of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify
(i) whether the Borrower is requesting a Term Borrowing, a Revolving Borrowing, a conversion of Term Loans or Revolving Loans from one Type to the other or a continuation of Eurodollar Rate Loans,

(ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),

(iii) the principal amount of Loans to be borrowed, converted or continued,

(iv) the Class and Type of Loans to be borrowed or to which existing Term Loans or Revolving Loans are to be converted,

(v) if applicable, the duration of the Interest Period with respect thereto and

(vi) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as Eurodollar Rate Loans with an Interest Period of one (1) month (or, in the case of any Euro Term Loans, EURIBOR Rate Loans with an Interest Period of one (1) month). If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a Eurodollar Rate Loan or EURIBOR Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of Eurodollar Rate Loans or EURIBOR Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans or EURIBOR Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans or EURIBOR Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Eurodollar Rate Loans or EURIBOR Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent’s Office not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 3:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4 for any Borrowing, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (a) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (b) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent; provided that if on the date the Committed Loan Notice with respect to a Borrowing under a Revolving Facility is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing and second, to the Borrower as provided above.

(3) Except as otherwise provided herein, a Eurodollar Rate Loan or EURIBOR Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan or EURIBOR Rate Loan, as applicable, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Facility Lenders under the applicable Facility may require by notice to the Borrower that no Loans under such Facility may be converted to or continued as Eurodollar Rate Loans.
(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans or EURIBOR Rate Loans upon determination of such interest rate. The determination of the Eurodollar Rate and EURIBOR Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent’s prime rate used in determining the Base Rate promptly following the announcement of such change.

(5) After giving effect to all Term Borrowings, all Revolving Borrowings, all conversions of Term Loans or Revolving Loans from one Type to the other, and all continuations of Term Loans or Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; provided that after the establishment of any new Class of Loans pursuant to an Incremental Amendment, a Refinancing Amendment, an Extension Amendment or an amendment in respect of Replacement Loans, the number of Interest Periods otherwise permitted by this Section 2.02(5) shall increase by three (3) Interest Periods for each applicable Class so established.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loans, prior to 1:30 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share and such other applicable share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate plus any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender’s Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.
SECTION 2.03 Letters of Credit.

(1) The Letter of Credit Commitments.

(a) Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.03, (A) from time to time on any Business Day during the period from the Closing Date until the L/C Expiration Date, to issue Letters of Credit denominated in an Available LC Currency for the account of the Borrower, Holdings or a Restricted Subsidiary (provided that any such Letter of Credit may be for the benefit of Holdings or any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(2), and (B) to honor drawings under the Letters of Credit and (ii) the Revolving Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; provided that no Issuing Bank shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Revolving Exposure of any Revolving Lender would exceed such Lender’s Revolving Commitment, (y) the Outstanding Amount of the L/C Obligations would exceed the L/C Sublimit or (z) the Outstanding Amount of the L/C Obligations issued by such Issuing Bank would exceed its L/C Commitment. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower’s ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(b) An Issuing Bank shall be under no obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or direct that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such Issuing Bank is not otherwise compensated hereunder);

(ii) subject to Section 2.03(2)(c), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless (A) each Appropriate Lender has approved of such expiration date or (B) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank;

(iii) the expiry date of such requested Letter of Credit would occur after the L/C Expiration Date, unless (A) each Appropriate Lender has approved of such expiration date or (B) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank;

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(iv) the issuance of such Letter of Credit would violate any policies of such Issuing Bank applicable to letters of credit generally; provided that (i) Morgan Stanley Senior Funding, Inc. and its Affiliates shall only be required to issue standby letters of credit and shall not be required to issue (x) any bank guarantees or (y) any letter of credit denominated in any Available LC Currency other than Dollars without its prior consent and (ii) Bank of America, N.A. and JPMorgan Chase Bank, N.A. and their respective Affiliates shall not be required to issue any bank guarantees; or

(v) any Revolving Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Borrower or such Lender to eliminate such Issuing Bank’s actual or potential Fronting Exposure (after giving effect to Section 2.17(1)(d)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(c) An Issuing Bank shall be under no obligation to amend any Letter of Credit if (i) such Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(2) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(a) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an Issuing Bank (with a copy to the Administrative Agent) in the form of a L/C Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such L/C Application must be received by the relevant Issuing Bank and the Administrative Agent not later than 1:00 p.m., New York time, at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be, or, in each case, such later date and time as the relevant Issuing Bank may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such L/C Application shall specify in form and detail reasonably satisfactory to the relevant Issuing Bank:

(i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day);

(ii) the amount thereof;

(iii) the expiry date thereof;

(iv) the name and address of the beneficiary thereof;

(v) the documents to be presented by such beneficiary in case of any drawing thereunder;

(vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder;

(vii) the Available LC Currency in which the requested Letter of Credit is to be issued will be denominated; and
(viii) such other matters as the relevant Issuing Bank may reasonably request.

In the case of a request for an amendment of any outstanding Letter of Credit, such L/C Application shall specify in form and detail reasonably satisfactory to the relevant Issuing Bank:

(A) the Letter of Credit to be amended;

(B) the proposed date of amendment thereof (which shall be a Business Day);

(C) the nature of the proposed amendment; and

(D) such other matters as the relevant Issuing Bank may reasonably request.

(b) Promptly after receipt of any L/C Application, the relevant Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such L/C Application from the Borrower and, if not, such Issuing Bank will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant Issuing Bank of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or, if applicable, for the benefit of Holdings or Subsidiary of the Borrower) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender’s Applicable Percentage of the amount of such Letter of Credit.

(c) If the Borrower so requests in any applicable L/C Application, the relevant Issuing Bank shall agree to issue a Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the relevant Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon by the relevant Issuing Bank and the Borrower at the time such Letter of Credit is issued. Unless otherwise agreed in such Letter of Credit, the Borrower shall not be required to make a specific request to the relevant Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the applicable Lenders shall be deemed to have authorized (but may not require) the relevant Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the applicable L/C Expiration Date, unless the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank; provided that the relevant Issuing Bank shall not permit any such extension if (i) the relevant Issuing Bank has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(1)(b) or otherwise) or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 will not be satisfied on the applicable date of the Credit Extension.

(d) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.
(3) Drawings and Reimbursements; Funding of Participations.

(a) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant Issuing Bank shall promptly notify the Borrower and the Administrative Agent thereof (including the date on which such payment is to be made). Not later than 12:00 p.m. on the first Business Day immediately following any payment by an Issuing Bank under a Letter of Credit with notice to the Borrower (each such date, an “Honor Date”), the Borrower shall reimburse, or cause to be reimbursed, such Issuing Bank, in each case, through the Administrative Agent in an amount equal to the amount of such drawing (it being understood that in the case of a Letter of Credit denominated in an Available Currency other than Dollars, the amount of such Letter of Credit shall be determined by taking the Dollar Amount of such Letter of Credit); provided that, if such reimbursement is not made on the date of drawing, the Borrower shall pay interest to the relevant Issuing Bank on such amount at the rate applicable to Base Rate Loans (without duplication of interest payable on L/C Borrowings). The relevant Issuing Bank shall notify the Borrower of the amount of the drawing promptly following the determination thereof. If the Borrower fails to so reimburse, or cause to be reimbursed, such Issuing Bank by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Appropriate Lender’s Applicable Percentage thereof. In such event, in the case of an Unreimbursed Amount under a Letter of Credit, the Borrower shall be deemed to have requested a Revolving Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the requirements for the amount of the unutilized portion of the Revolving Commitments under the applicable Revolving Facility of the Appropriate Lenders and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by an Issuing Bank or the Administrative Agent pursuant to this Section 2.03(3)(a) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(b) Each Appropriate Lender (including any Lender acting as an Issuing Bank) shall upon any notice pursuant to Section 2.03(3)(a) make funds available to the Administrative Agent for the account of the relevant Issuing Bank in Dollars (it being understood that in the case of a Letter of Credit denominated in an Available LC Currency other than Dollars, the amount of such Letter of Credit shall be determined by taking the Dollar Amount of such Letter of Credit) at the Administrative Agent’s Office for payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(3)(c), each Appropriate Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount and, for the avoidance of doubt, the making of such Base Rate Loans in an aggregate amount equal to such Unreimbursed Amount shall satisfy the Borrower’s reimbursement obligations with respect thereof. The Administrative Agent shall remit the funds so received to the relevant Issuing Bank.

(c) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Appropriate Lender’s payment to the Administrative Agent for the account of the relevant Issuing Bank pursuant to Section 2.03(3)(b) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.
(d) Until each Appropriate Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(3) to reimburse the relevant Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of the relevant Issuing Bank.

(e) Each Revolving Lender’s obligation to make Revolving Loans or L/C Advances to reimburse an Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(3), shall be absolute and unconditional and shall not be affected by any circumstance, including

(i) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant Issuing Bank, the Borrower or any other Person for any reason whatsoever;

(ii) the occurrence or continuance of a Default; or

(iii) any other occurrence, event or condition, whether or not similar to any of the foregoing;

provided that each Revolving Lender’s obligation to make Revolving Loans pursuant to this Section 2.03(3) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(f) If any Revolving Lender fails to make available to the Administrative Agent for the account of the relevant Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(3) by the time specified in Section 2.03(3)(b), such Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the Overnight Rate from time to time in effect. A certificate of the relevant Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(3)(f) shall be conclusive absent manifest error.

(4) Repayment of Participations.

(a) If, at any time after an Issuing Bank has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender’s L/C Advance in respect of such payment in accordance with Section 2.03(3), the Administrative Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender’s L/C Advance was outstanding) in the amount received by the Administrative Agent.

(b) If any payment received by the Administrative Agent for the account of an Issuing Bank pursuant to Section 2.03(3)(a) or Section 2.03(3)(b) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such Issuing Bank its Applicable Percentage thereof on demand of the Administrative Agent,
plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Overnight Rate
from time to time in effect. The Obligations of the Revolving Lenders under this Section 2.03(4)(b) shall survive the payment in full of the Obligations
and the termination of this Agreement.

(5) **Obligations Absolute.** The obligation of the Borrower to reimburse the relevant Issuing Bank for each drawing under each Letter of
Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the
terms of this Agreement under all circumstances, including the following:

(a) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(b) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary
or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant Issuing
Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any
agreement or instrument relating thereto, or any unrelated transaction;

(c) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or
insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise
of any document required in order to make a drawing under such Letter of Credit;

(d) any payment by the relevant Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly
comply with the terms of such Letter of Credit; or any payment made by the relevant Issuing Bank under such Letter of Credit to any Person
purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or
successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor
Relief Law;

(e) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the
Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

(f) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that
might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to
consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that
are caused by acts or omissions by such Issuing Bank constituting gross negligence, bad faith or willful misconduct on the part of such Issuing Bank as
determined in a final and non-appealable judgment by a court of competent jurisdiction.

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(6) **Role of Issuing Banks.** Each Issuing Bank shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate or facsimile message, order or other document or telephone message signed, sent or made by any Person that such Issuing Bank reasonably believed to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by such Issuing Bank (which may include, at the Issuing Bank’s option, counsel of the Administrative Agent or the Borrower). Each Lender and the Borrower agrees that, in paying any drawing under a Letter of Credit, the relevant Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Banks, any Related Person of such Issuing Banks, nor any of the respective correspondents, participants or assignees of any Issuing Bank shall be liable to any Lender for

(a) any action taken or omitted in connection herewith at the request or with the approval of the Lenders, the Required Lenders or the Required Facility Lenders in respect of the Revolving Commitments, as applicable;

(b) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or

(c) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Application.

The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, any Related Persons of such Issuing Banks, nor any of the respective correspondents, participants or assignees of any Issuing Bank, shall be liable or responsible for any of the matters described in clauses (a) through (f) of Section 2.03(5); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank’s willful misconduct, bad faith or gross negligence or such Issuing Bank’s willful or grossly negligent, or bad faith, failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no Issuing Bank shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

Each Revolving Lender shall, ratably in accordance with its Applicable Percentage, indemnify each Issuing Bank, its Related Persons and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitees’ willful misconduct, bad faith or gross negligence or such Issuing Bank’s willful or grossly negligent, or bad faith, failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction) that such indemnitees may suffer or incur in connection with this Section 2.03 or any action taken or omitted to be taken by such indemnitees hereunder.
Cash Collateral. Subject to Section 2.17(1)(d), if,

(a) as of any L/C Expiration Date, any applicable Letter of Credit may for any reason remain outstanding and partially or wholly undrawn,

(b) any Event of Default occurs and is continuing and the Administrative Agent, upon the direction of the Required Facility Lenders in respect of the Revolving Facility, requires the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02 or

(c) an Event of Default set forth under Section 8.01(6) occurs and is continuing,

the Borrower will Cash Collateralize, or cause to be Cash Collateralized, the then Outstanding Amount of all relevant L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default or the applicable L/C Expiration Date, as the case may be), and shall do so not later than 2:00 p.m. on (i) in the case of the immediately preceding clauses (a) or (b), (x) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 p.m. or (y) if clause (x) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (ii) in the case of the immediately preceding clause (c), the Business Day on which an Event of Default set forth under Section 8.01(6) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent or the applicable Issuing Bank, the Borrower will Cash Collateralize all Fronting Exposure (after giving effect to Section 2.17(1)(d) and any Cash Collateral provided by the Defaulting Lender). The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and the Revolving Lenders, a security interest in all such Cash Collateral. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in readily available Cash Equivalents selected by the Administrative Agent in its sole discretion. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Loan Parties or the Administrative Agent (in its capacity as the depositary bank and on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all relevant L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay, or cause to be paid, to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at the Administrative Agent as aforesaid, an amount equal to the excess of (A) such aggregate Outstanding Amount over (B) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant Issuing Bank. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such relevant L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall promptly be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(7) is cured or otherwise waived, then so long as no other Event of Default has occurred and is continuing, the amount of any Cash Collateral pledged to Cash Collateralize such Letter of Credit shall promptly be refunded to the Borrower.

Existing Letters of Credit. The parties hereto agree that the Existing Letters of Credit shall be deemed Letters of Credit for all purposes under this Agreement, without any further action by the Borrower.
(9) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent, for the account of each Revolving Lender for the applicable Revolving Facility in accordance with its Applicable Percentage, a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate set forth in the “Eurodollar Rate and Letter of Credit Fees” column of the chart in the definition of “Applicable Rate” times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount decreases or increases periodically pursuant to the terms of such Letter of Credit); provided, however, that any Letter of Credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable Issuing Bank pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.17(1)(d), with the balance of such fee, if any, payable to the applicable Issuing Bank for its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears on the basis of a 360-day year and actual days elapsed. Such Letter of Credit fees shall be due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the L/C Expiration Date and thereafter on demand. If there is any change in the Applicable Rate set forth in the “Eurodollar Rate and Letter of Credit Fees” column of the chart in the definition of “Applicable Rate” during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(10) Fronting Fee and Documentary and Processing Charges Payable to Issuing Banks. The Borrower shall pay directly to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank equal to 0.125% per annum (or such other lower amount as may be mutually agreed by the Borrower and the applicable Issuing Bank) of the maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases or decreases periodically pursuant to the terms of such Letter of Credit) or such lesser fee as may be agreed with such Issuing Bank. Such fronting fees shall be computed on a quarterly basis in arrears on the basis of a 360-day year and actual days elapsed. Such fronting fees shall be due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the L/C Expiration Date and thereafter on demand. In addition, the Borrower shall pay, or cause to be paid, directly to each Issuing Bank for its own account with respect to each Letter of Credit issued by such Issuing Bank the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(11) Conflict with L/C Application. Notwithstanding anything else to the contrary in this Agreement or any L/C Application, in the event of any conflict between the terms hereof and the terms of any L/C Application, the terms hereof shall control.

(12) Addition of an Issuing Bank. There may be one or more Issuing Banks under this Agreement from time to time. After the Closing Date, a Revolving Lender reasonably acceptable to the Borrower and the Administrative Agent may become an additional Issuing Bank hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Lender. The Administrative Agent shall notify the Revolving Lenders of any such additional Issuing Bank.
Provisions Related to Extended Revolving Commitments. If the L/C Expiration Date in respect of any Class of Revolving Commitments occurs prior to the expiry date of any Letter of Credit, then (a) if consented to by the Issuing Bank which issued such Letter of Credit, if one or more other Classes of Revolving Commitments in respect of which the L/C Expiration Date shall not have so occurred are then in effect, such Letters of Credit for which consent has been obtained shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to Sections 2.03(3) and (4)) under (and ratably participated in by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating Classes up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (b) to the extent not reallocated pursuant to immediately preceding clause (a) and unless provisions reasonably satisfactory to the applicable Issuing Bank for the treatment of such Letter of Credit as a letter of credit under a successor credit facility have been agreed upon, the Borrower shall, on or prior to the applicable Maturity Date, cause all such Letters of Credit to be replaced and returned to the applicable Issuing Bank undrawn and marked “cancelled” or to the extent that the Borrower is unable to so replace and return any Letter(s) of Credit, such Letter(s) of Credit shall be backstopped by a “back to back” letter of credit reasonably satisfactory to the applicable Issuing Bank or the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.03(7).

Letter of Credit Reports. For so long as any Letter of Credit issued by an Issuing Bank that is not the Administrative Agent is outstanding, such Issuing Bank shall deliver to the Administrative Agent on the last Business Day of each calendar month, and on each date that an L/C Credit Extension occurs with respect to any such Letter of Credit, a report in the form of Exhibit R, appropriately completed with the information for every outstanding Letter of Credit issued by such Issuing Bank.

Letters of Credit Issued for Holdings and Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, Holdings or a Subsidiary of the Borrower, the Borrower shall be obligated to reimburse, or cause to be reimbursed, the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Holdings or any Subsidiary inures to the benefit of the Borrower, and that the Borrower’s businesses derives substantial benefits from the businesses of Holdings and each Subsidiary.

Applicability of ISP and UCP. Unless otherwise expressly agreed by the relevant Issuing Bank and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

SECTION 2.04 [Reserved].

SECTION 2.05 Prepayments.

(a) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans and any Class or Classes of Revolving Loans in whole or in part without premium (except as set forth in Section 2.18) or penalty; provided that
such notice must be received by the Administrative Agent not later than (A) 1:00 p.m., New York time, three (3) Business Days prior to any
date of prepayment of Eurodollar Rate Loans or EURIBOR Rate Loans and (B) 12:00 p.m., New York time, on the date of prepayment of Base
Rate Loans;

(ii) any prepayment of (x) Eurodollar Rate Loans shall be in a principal amount of $1.0 million or a whole multiple of $250,000 in excess
thereof or, if less, the entire principal amount thereof then outstanding and (y) EURIBOR Rate Loans shall be in a principal amount of
€1.0 million or a whole multiple of €250,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if
less, the entire principal amount thereof then outstanding.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The
Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender’s Pro Rata
Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such
notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan or EURIBOR Rate Loan shall be accompanied
by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans
pursuant to this Section 2.05(1), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal
payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares.

(b) [Reserved]

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind (or delay the date of prepayment
identified in) any notice of prepayment under Section 2.05(1)(a) by written notice to the Administrative Agent not later than 12:00 p.m., New York time,
on such prepayment date if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility or other conditional
event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed.

(d) Voluntary prepayments of any Class of Term Loans permitted hereunder shall be applied to the remaining scheduled installments of
principal thereof in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct
order of maturity). Each prepayment in respect of any Term Loans pursuant to this Section 2.05 may be applied to any Class of Term Loans as directed
by the Borrower. For the avoidance of doubt, the Borrower may (i) prepay Term Loans of an Existing Term Loan Class pursuant to this Section 2.05
without any requirement to prepay Extended Term Loans that were converted or exchanged from such Existing Term Loan Class and (ii) prepay
Extended Term Loans pursuant to this Section 2.05 without any requirement to prepay Term Loans of an Existing Term Loan Class that were converted
or exchanged for such Extended Term Loans. In the event that the Borrower does not specify the order in which to apply prepayments to reduce
scheduled installments of principal or as between Classes of Term Loans, the Borrower shall be deemed to have elected that such proceeds be applied to
reduce the scheduled installments of principal in direct order of maturity on a pro rata basis among Term Loan Classes.
(e) Notwithstanding anything in any Loan Document to the contrary, so long as (x) no Event of Default has occurred and is continuing and
(y) no proceeds of Revolving Loans are used for this purpose, any Borrower Party may (i) purchase outstanding Term Loans on a non-pro rata basis
through open market purchases or (ii) prepay the outstanding Term Loans (which Term Loans shall, for the avoidance of doubt, be automatically and
permanently canceled immediately upon such purchase or prepayment), which in the case of clause (ii) only shall be prepaid without premium or
penalty on the following basis:

(A) Any Borrower Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower
Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of
Discounted Prepayment Offers (any such prepayment, the “Discounted Term Loan Prepayment”), in each case made in accordance with
this Section 2.05(1)(e) and without premium or penalty.

(B) (1) Any Borrower Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction
Agent with five (5) Business Days’ notice (or such shorter period as agreed by the Auction Agent) in the form of a Specified Discount
Prepayment Notice; provided that (I) any such offer shall be made available, at the sole discretion of the applicable Borrower Party, to
(x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer
shall specify the aggregate principal amount offered to be prepaid (the “Specified Discount Prepayment Amount”) with respect to each
applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the “Specified
Discount”) of such Term Loans to be prepaid (it being understood that different Specified Discounts or Specified Discount Prepayment
Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate
offer pursuant to the terms of this Section 2.05(1)(e)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount
not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) each such offer shall remain outstanding
through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a
copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and
returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business
Day after the date of delivery of such notice to such Lenders (the “Specified Discount Prepayment Response Date”).

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response
Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so
(such accepting Lender, a “Discount Prepayment Accepting Lender”), the amount and the Classes of such Lender’s Term Loans to be prepaid at
such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable.
Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment
Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the relevant Borrower Party will make a prepayment of outstanding Term
Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and
Classes of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2) above; provided that
if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds
the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “Specified Discount Proration”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the applicable Borrower Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Borrower Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days’ notice (or such shorter period as agreed by the Auction Agent) in the form of a Discount Range Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the “Discount Range Prepayment Amount”), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the “Discount Range”) of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Borrower Party (it being understood that different Discount Ranges or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the “Discount Range Prepayment Response Date”). Each Term Lender’s Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the “Submitted Discount”) at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender’s Term Loans (the “Submitted Amount”) such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.
(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Borrower Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “Applicable Discount”) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a “Participating Lender”).

(3) If there is at least one Participating Lender, the relevant Borrower Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; provided that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “Identified Participating Lenders”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “Discount Range Proration”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Borrower Party of the solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Term Lender to be prepaid at the Applicable Discount on such date and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).
(1) Any Borrower Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice (or such later notice specified therein); provided that (i) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the “Solicited Discounted Prepayment Amount”) and the Class or Classes of Term Loans the applicable Borrower Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Term Lenders (the “Solicited Discounted Prepayment Response Date”). Each Term Lender’s Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date and (z) specify both a discount to par (the “Offered Discount”) at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and Classes of such Term Loans (the “Offered Amount”) such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Borrower Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Borrower Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the applicable Borrower Party (the “Acceptable Discount”), if any. If the applicable Borrower Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Borrower Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “Acceptance Date”), the applicable Borrower Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the applicable Borrower Party by the Acceptance Date, such Borrower Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Determination Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “Discounted Prepayment Determination Date”), the Auction Agent will determine (with the consent of such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans

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(the “Acceptable Prepayment Amount”) to be prepaid by the relevant Borrower Party at the Acceptable Discount in accordance with this Section 2.05(1)(e)(D). If the applicable Borrower Party elects to accept any Acceptable Discount, then such Borrower Party agrees to accept all Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “Qualifying Lender”). The applicable Borrower Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; provided that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “Identified Qualifying Lenders”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “Solicited Discount Proration”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Borrower Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid to be prepaid at the Acceptable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may require, as a condition to the applicable Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Borrower Party to such Auction Agent for its own account in connection therewith.

(F) If any Term Loan is prepaid in accordance with subsections (B) through (D) above, a Borrower Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Borrower Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent’s Office in immediately available funds not later than 12:00 p.m., New York time, on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the relevant Class(es) of Term Loans and Lenders as specified by the applicable Borrower Party in the applicable offer. The Term Loans so prepaid shall be
accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(1)(e) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Term Loans of such Lenders in accordance with their respective applicable share as calculated by the Auction Agent in accordance with this Section 2.05(1)(e) and, if the Administrative Agent is not the Auction Agent, the Administrative Agent shall be fully protected in relying on such calculations of the Auction Agent. The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(1)(e), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Borrower Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(1)(e), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent’s (or its delegate’s) actual receipt during normal business hours of such notice or communication; provided that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next succeeding Business Day.

(I) Each of the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(1)(e) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(1)(e) as well as activities of the Auction Agent.

(J) Each Borrower Party shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(1)(e) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).
(2) **Mandatory.**

(a) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(1) and the related Compliance Certificate has been delivered pursuant to Section 6.02(1), commencing with the delivery of financial statements for the fiscal year ended on or about December 29, 2018, the Borrower shall, subject to clauses (g) and (h) of this Section 2.05(2), prepay, or cause to be prepaid, an aggregate principal amount of Term Loans (the “**ECF Payment Amount**”) equal to 50% (such percentage as it may be reduced as described below, the “**ECF Percentage**”) of Excess Cash Flow, if any, for the fiscal year covered by such financial statements minus the sum of all voluntary prepayments, repurchase or redemptions of

(i) Term Loans made pursuant to Sections 2.05(1)(a) and 2.05(1)(e) (in an amount, in the case of prepayments pursuant to Section 2.05(1)(e), equal to the discounted amount actually paid in respect of the principal amount of such Term Loans and only to the extent that such Loans have been cancelled),

(ii) Credit Agreement Refinancing Indebtedness, Permitted Incremental Equivalent Debt, and any other Indebtedness in the form of notes or term loans, in each case to the extent secured by the Collateral in whole or in part on a pari passu basis with the First Lien Obligations under this Agreement (but without regard to the control of remedies),

(iii) Revolving Loans and loans under any other revolving facility that is secured, in whole or in part, on a pari passu basis by the Collateral with the First Lien Obligations under this Agreement (but without regard to the control of remedies) (in each case of this clause (iii) (and with respect to any revolving facility under clause (ii) above), to the extent accompanied by a permanent reduction in the corresponding Revolving Commitments or other revolving commitments), and

(iv) Second Lien Term Loans and Permitted Incremental Equivalent Debt (as defined in the Second Lien Credit Agreement) secured by the Collateral, in whole or in part, on a pari passu basis with the Second Lien Term Loans,

in the case of each of the immediately preceding clauses (i), (ii), (iii) and (iv), made during such fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to this Section 2.05(2)(a) for any prior fiscal year) or after the fiscal year-end but prior to the date a prepayment pursuant to this Section 2.05(2)(a) is required to be made in respect of such fiscal year and in each case to the extent such prepayments are not funded with the proceeds of Funded Debt (other than any Indebtedness under a Revolving Facility or any other revolving credit facilities); provided that (w) a prepayment of Term Loans pursuant to this 2.05(2)(a) in respect of any fiscal year shall only be required in the amount (if any) by which the ECF Payment Amount for such fiscal year exceeds $35.0 million, (x) the ECF Percentage shall be 25% if the First Lien Net Leverage Ratio as of the end of the fiscal year covered by such financial statements was less than or equal to 3.25 to 1.00 and greater than 2.50 to 1.00 (calculated after giving effect to such prepayment at a rate of 50%) and (y) the ECF Percentage shall be 0% if the First Lien Net Leverage Ratio as of the end of the fiscal year covered by such financial statements was less than or equal to 2.50 to 1.00 (calculated after giving effect to such prepayment at a rate of 25%); provided further that:

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to Discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such portion of Excess Cash Flow otherwise required to repay the Term Loans pursuant to this Section 2.05(2)(a) on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such Discharge at such time) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the
Term Loans that would have otherwise been required pursuant to this Section 2.05(2)(a) shall be reduced accordingly (provided that the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Excess Cash Flow shall be allocated to the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a)); and

(B) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a).

(b) (i) If (x) the Borrower or any Restricted Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Proceeds, the Borrower shall prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (h) of this Section 2.05, an aggregate principal amount of Term Loans equal to 100% (such percentage as it may be reduced as described below, the "Net Proceeds Percentage") of all Net Proceeds realized or received; provided that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment or a binding letter of intent to reinvest) in accordance with Section 2.05(2)(b)(ii); provided further that (x) the Net Proceeds Percentage shall be 50% if the First Lien Net Leverage Ratio for the Test Period most recently ended prior to the date of such required prepayment is less than or equal to 3.25 to 1.00 and greater than 2.50 to 1.00 and (y) the Net Proceeds Percentage shall be 0% if the First Lien Net Leverage Ratio for the Test Period most recently ended prior to the date of such required prepayment is less than or equal to 2.50 to 1.00; provided further that

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to Discharge any Other Applicable Indebtedness with Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such Net Proceeds otherwise required to repay the Term Loans pursuant to this Section 2.05(2)(b)(i) on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such Discharge at such time), to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(2)(b)(i) shall be reduced accordingly (provided that the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Net Proceeds shall be allocated to the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(b)(i));

(B) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(b)(i).
With respect to any Net Proceeds realized or received with respect to any Asset Sale or any Casualty Event, the Borrower or any Restricted Subsidiary, at its option, may reinvest all or any portion of such Net Proceeds in assets useful for their business within (x) eighteen (18) months following receipt of such Net Proceeds or (y) if the Borrower or any Restricted Subsidiary enters into a legally binding commitment or a legally binding letter of intent to reinvest such Net Proceeds within eighteen (18) months following receipt thereof, within the later of (A) eighteen (18) months following receipt thereof and (B) one hundred eighty (180) days of the date of such legally binding commitment or legally binding letter of intent; provided that the Borrower may elect to deem expenditures that otherwise would be permissible reinvestments that occur prior to receipt of such Net Proceeds to have been reinvested in accordance with the provisions of this Section 2.05(2)(b)(ii) (it being understood that such deemed expenditures shall have been made no earlier than the earliest of notice to the Administrative Agent, execution of a definitive agreement for such Asset Sale and consummation of such Asset Sale or Casualty Event); provided further that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after such reinvestment election, and subject to clauses (g) and (h) of this Section 2.05(2), an amount equal to any such Net Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.05.

(c) [Reserved].

(d) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness (i) not expressly permitted to be incurred or issued pursuant to Section 7.02 or (ii) that constitutes Other Loans or Credit Agreement Refinancing Indebtedness, in each case, incurred or issued to refinance any Class (or Classes) of Term Loans resulting in Net Proceeds (as opposed to such Credit Agreement Refinancing Indebtedness or Other Loans arising out of an exchange of existing Term Loans for such Credit Agreement Refinancing Indebtedness or Other Loans), the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(e) (i) Except as otherwise set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment, each prepayment of Term Loans required by Sections 2.05(2)(a), (b) and (d)(i) shall be allocated to any Class of Term Loans outstanding as directed by the Borrower (provided that, notwithstanding the foregoing, any prepayments pursuant to Section 2.05(2)(a), (b) and (d)(i) of the Closing Date USD Term Loans and Closing Date Euro Term Loans shall be applied on a pro rata basis (as determined in accordance with Section 1.10(4)) (for the avoidance of doubt, which prepayments shall be made in Dollars in the case of the Closing Date USD Term Loans and Euros in the case of the Closing Date Euro Term Loans), shall be applied pro rata to Term Lenders within such Class of Term Loans, based upon the outstanding principal amounts owing to each such Term Lender under such Class of Term Loans and shall be applied to reduce such remaining scheduled installments of principal within such Class of Term Loans in direct order of maturity; provided that

(x) such prepayments may not be directed to a later maturing Class of Term Loans without at least a pro rata repayment of any earlier maturing Classes of Term Loans (except that any Class of Incremental Term Loans, Other Term Loans, Extended Term Loans or Replacement Loans may specify that one or more other Classes of later maturing Term Loans may be prepaid prior to such Class of earlier maturing Term Loans), and
(y) in the event that there are two or more outstanding Classes of Term Loans with the same Maturity Date, such prepayments may not be directed to any such Class of Term Loans without at least a pro rata repayment of any Classes of Term Loans maturing on the same date (except that any Class of Incremental Term Loans, Other Term Loans, Extended Term Loans or Replacement Loans may specify that one or more other Classes of Term Loans with the same Maturity Date may be prepaid prior to such Class of Term Loans maturing on the same date), and

(ii) each prepayment of Term Loans required by Section 2.05(2)(d)(ii) shall be allocated to any Class or Classes of Term Loans being refinanced as directed by the Borrower and shall be applied pro rata to Term Lenders within each such Class, based upon the outstanding principal amounts owing to each such Term Lender under each such Class of Term Loans.

(f) If for any reason the aggregate Outstanding Amount of Revolving Loans and L/C Obligations at any time exceeds the aggregate Revolving Commitments then in effect, the Borrower shall promptly prepay Revolving Loans or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(2) if after the prepayment in full of the Revolving Loans such aggregate Outstanding Amount of L/C Obligations exceeds the aggregate Revolving Commitments then in effect.

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (a) through (d) of this Section 2.05(2) at least three (3) Business Days prior to the date of such prepayment (provided that, in the case of clause (b) or (d) of this Section 2.05(2), the Borrower may rescind (or delay the date of prepayment identified in) such notice if such prepayment would have resulted from a refinancing of all or any portion of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower’s prepayment notice and of such Appropriate Lender’s Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the “Declined Proceeds”) of Term Loans required to be made pursuant to clauses (a), (b) and (d)(i) of this Section 2.05(2) by providing written notice (each, a “Rejection Notice”) to the Administrative Agent and the Borrower no later than 5:00 p.m., New York time, one (1) Business Day after the date of such Lender’s receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent and the Borrower no later than 5:00 p.m., New York time, one (1) Business Day after the date of such Lender’s receipt of notice from the Administrative Agent regarding such prepayment, each such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Subject to the terms of the Second Lien Credit Agreement, any Declined Proceeds remaining must be offered to prepay the Second Lien Term Loans to the extent otherwise required pursuant to the Second Lien Credit Agreement; provided, that any such prepayment amount declined by the Second Lien Lenders shall be retained by the Borrower (or the applicable Restricted Subsidiary) and may be applied by the Borrower or such Restricted Subsidiary in any manner not prohibited by this Agreement.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a “Foreign Asset Sale”), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a “Foreign Casualty Event”) or all or a portion of Excess Cash Flow are prohibited or delayed by applicable local law from being repatriated to the United States, an amount equal
to the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2) so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, an amount equal to such Net Proceeds or Excess Cash Flow permitted to be repatriated will be promptly (and in any event not later than two (2) Business Days after any such repatriation) applied (net of additional taxes that are or would be payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any or all of the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, an amount equal to the Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2).

(i) All prepayments under this Section 2.05 (other than prepayments of Base Rate Revolving Loans that are not made in connection with the termination or permanent reduction of Revolving Commitments) shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurodollar Rate Loan or EURIBOR Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Rate Loan or EURIBOR Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Rate Loans or EURIBOR Rate Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurodollar Rate Loan or EURIBOR Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

SECTION 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; provided that

(a) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction,

(b) any such partial reduction shall be in an aggregate amount of $5.0 million or any whole multiple of $1.0 million in excess thereof or, if less, the entire amount thereof and
Except as provided above, the amount of any such Revolving Commitment reduction shall not be applied to the L/C Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of any Commitments if such termination would have resulted from a refinancing of all of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed.

(2) Mandatory. The Closing Date USD Term Loan Commitment of each USD Term Lender on the Closing Date shall be automatically and permanently reduced to $0 upon the making of such Lender’s Closing Date USD Term Loans to the Borrower pursuant to Section 2.01(1)(a). The Closing Date Euro Term Loan Commitment of each Euro Term Lender on the Closing Date shall be automatically and permanently reduced to €0 upon the making of such Lender’s Closing Date Euro Term Loans to the Borrower pursuant to Section 2.01(1)(b). The Revolving Commitment of each Revolving Lender shall automatically and permanently terminate on the Maturity Date for the applicable Revolving Facility.

(3) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the L/C Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced on a pro rata basis (determined on the basis of the aggregate Commitments under such Class) (other than the termination of the Commitment of any Lender as provided in Section 3.07). Any commitment fees accrued until the effective date of any termination of the Revolving Commitments shall be paid on the effective date of such termination.

SECTION 2.07 Repayment of Loans.

(1) Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (a) on the last Business Day of each March, June, September and December, commencing with December 29, 2017, an aggregate principal amount (x) in Dollars equal to 0.25% of the aggregate principal amount of all Closing Date USD Term Loans outstanding on the Closing Date and (y) in Euros equal to 0.25% of the aggregate principal amount of all Closing Date Euro Term Loans outstanding on the Closing Date (in each case, which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (b) on the Maturity Date for the Closing Date Term Loans, the aggregate principal amount of all Closing Date Term Loans outstanding on such date. In connection with any Incremental Term Loans that constitute part of the same Class as the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, the Borrower and the Administrative Agent shall be permitted to adjust the rate of prepayment in respect of such Class such that the Term Lenders holding Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, comprising part of such Class continue to receive a payment that is not less than the same Dollar amount that such Term Lenders would have received absent the incurrence of such Incremental Term Loans provided, that if such Incremental Term Loans are to be “fungible” with the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, notwithstanding any other conditions specified in this Section 2.07(1), the amortization schedule for such “fungible” Incremental Term Loan may provide for amortization in such other percentage(s) to be agreed by Borrower and the Administrative Agent to ensure that the Incremental Term Loans will be “fungible” with the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable.
Revolving Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the applicable Revolving Facility the aggregate principal amount of all Revolving Loans under such Facility outstanding on such date.

SECTION 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period, plus the Applicable Rate, (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, plus the Applicable Rate and (c) each EURIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the EURIBOR Rate for such Interest Period, plus the Applicable Rate.

(2) During the continuance of a Default under Section 8.01(1), the Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; provided that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest thereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

SECTION 2.09 Fees.

(1) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender under each Revolving Facility in accordance with its Applicable Percentage, a commitment fee equal to the applicable Commitment Fee Rate times the actual daily amount by which the aggregate Revolving Commitments exceed the sum of (a) the Outstanding Amount of Revolving Loans and (b) the Outstanding Amount of L/C Obligations; provided that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender under such Revolving Facility during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and provided further that no commitment fee shall accrue on any of the Commitments under any Revolving Facility of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee on each Revolving Commitment shall accrue at all times from the Closing Date (or date of initial effectiveness, as applicable) (and for the avoidance of doubt, the commitment fee on the Revolving Commitment under the Closing Date Revolving Facility shall accrue from the Closing Date) until the Maturity Date for the applicable Revolving Commitment, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each of March, June, September and December, commencing with December 29, 2017, and on the Maturity Date for such Revolving Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Commitment Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Commitment Fee Rate separately for each period during such quarter that such Commitment Fee Rate was in effect.
Other Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

SECTION 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.11 Evidence of Indebtedness.

(1) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the 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 the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, 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, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) In addition to the accounts and records referred to in Section 2.11(1), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(1) and (2), and by each Lender in its account or accounts pursuant to Sections 2.11(1) and (2), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.
SECTION 2.12 Payments Generally.

(1) All payments with respect to any Class of Loans to be made by the Borrower hereunder shall be made in the currency in which the Loans thereunder are denominated without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent’s Office for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate 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 Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) Except as otherwise expressly provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender or an Issuing Bank hereunder or, in the case of the Lenders, for the account of any Issuing Bank or the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender or Issuing Bank shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender or Issuing Bank in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender or Issuing Bank to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the “Compensation Period”) at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender’s Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the
Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Section 4.02 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit are several and not joint. The failure of any Lender to make any Loan or fund any participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

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

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). 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 sum of (i) the Outstanding Amount of all Loans outstanding at such time and (ii) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

SECTION 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein, if any Lender of any Class shall obtain payment in respect of any principal of or interest on account of the Loans of such Class made by it or the participations in L/C Obligations held by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them or such subparticipations in the participations in L/C Obligations held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class 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 (a) the amount of such paying Lender’s required repayment to (b) 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. For the avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.13 may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. For purposes of clause (3) of the definition of Excluded Taxes, any participation acquired by a Lender pursuant to this Section 2.13 shall be treated as having been acquired on the earlier date(s) on which the applicable interest(s) in the Commitment(s) or Loan(s) to which such participation relates were acquired by such Lender.

SECTION 2.14 Incremental Facilities

(1) Incremental Loan Request. The Borrower may at any time and from time to time after the Closing Date, by notice to the Administrative Agent (an “Incremental Loan Request”), request (A) one or more new commitments which may be of the same Class as any outstanding Term Loans (a “Term Loan Increase”) or a new Class of term loans (collectively with any Term Loan Increase, the “Incremental Term Commitments”) and/or (B) one or more increases in the amount of the Revolving Commitments (a “Revolving Commitment Increase”) or the establishment of one or more new revolving credit commitments (each an “Incremental Revolving Commitment”; and, collectively with any Incremental Term Commitments, the “Incremental Commitments”), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders. Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Commitments or Incremental Revolving Commitments.

(2) Incremental Loans. Any Incremental Term Loans or Incremental Revolving Commitments effected through the establishment of one or more new term loans or new revolving credit commitments, as applicable, made on an Incremental Facility Closing Date (other than a Loan Increase) shall be designated a separate Class of Incremental Term Loans or Incremental Revolving Commitments, as applicable, for all purposes of this Agreement. On any Incremental Facility Closing Date on which any Incremental Term Commitments of any Class are effected (including through any Term Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Term Lender of such Class shall make a Loan to the Borrower (an “Incremental Term Loan”) in an amount equal to its Incremental Term Commitment of such Class and (ii) each Incremental Term Lender of such Class shall become a Lender hereunder with respect to the Incremental Term Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto. On any Incremental Facility
Closing Date on which any Incremental Revolving Commitments of any Class are effected through the establishment of one or more new revolving credit commitments (including through any Revolving Commitment Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Revolving Lender of such Class shall make its Commitment available to the Borrower (when borrowed, an "Incremental Revolving Loan" and collectively with any Incremental Term Loan, an "Incremental Loan") in an amount equal to its Incremental Revolving Commitment of such Class and (ii) each Incremental Revolving Lender of such Class shall become a Lender hereunder with respect to the Incremental Revolving Commitment of such Class and the Incremental Revolving Loans of such Class made pursuant thereto.

(3) Incremental Lenders. Incremental Term Loans may be made, and Incremental Revolving Commitments may be provided, by any existing Lender as approved by the Borrower (but no existing Lender will have an obligation to make any Incremental Commitment (or Incremental Loan), nor will the Borrower have any obligation to approach any existing Lenders to provide any Incremental Commitment (or Incremental Loan)) or by any Additional Lender (each such existing Lender or Additional Lender providing such Loan or Commitment, an “Incremental Term Lender” or “Incremental Revolving Lender,” as applicable, and, collectively, the “Incremental Lenders”); provided that (i) the Administrative Agent or, in the case of any Incremental Revolving Commitments only, each Issuing Bank, shall have consented (in each case, not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Term Loans or providing such Incremental Revolving Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans or Revolving Commitments, as applicable, to such Additional Lender, (ii) with respect to Incremental Term Commitments, any Affiliated Lender providing an Incremental Term Commitment shall be subject to the same restrictions set forth in Section 10.07(h) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Incremental Revolving Commitments.

(4) Effectiveness of Incremental Amendment. The effectiveness of any Incremental Amendment and the availability of any initial credit extensions thereunder shall be subject to the satisfaction on the date thereof (the “Incremental Facility Closing Date”) of each of the following conditions (subject to Section 1.07(10)):

   (a) (x) no Event of Default shall exist after giving effect to such Incremental Commitments; provided that, with respect to any Incremental Amendment the primary purpose of which is to finance an acquisition or other Investment permitted by this Agreement, the requirement pursuant to this clause (4)(a)(x) shall be that no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) shall exist after giving effect to such Incremental Commitments, and (y) the representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Incremental Amendment (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); provided that, in connection with an acquisition or other Investment permitted hereunder, the conditions in clause (x) and in clause (y) shall only be required to the extent requested by the Persons providing more than 50% of the applicable Incremental Term Loans and Incremental Term Commitments or Incremental Revolving Loans and Incremental Revolving Commitments, as the case may be (provided, further, that, in the case of an acquisition or other Investment with a purchase price in excess of $100.0 million, the conditions contained in the proviso to clause (x) with respect to no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) and in clause (y) with respect to Specified Representations, in each case, shall be required whether or not requested by such Persons, unless waived in accordance with Section 10.01);
(b) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than $5.0 million (provided that such amount may be less than $5.0 million if such amount represents all remaining availability under the limit set forth in clause (c) of this Section 2.14(4)) and each Incremental Revolving Commitment shall be in an aggregate principal amount that is not less than $5.0 million (provided that such amount may be less than $5.0 million if such amount represents all remaining availability under the limit set forth in clause (c) of Section 2.14(4));

(c) the aggregate principal amount of Incremental Term Loans and Incremental Revolving Commitments shall not, together with the aggregate principal amount of Permitted Incremental Equivalent Debt, exceed the sum of:

(A) (1) $500.0 million plus any General Debt Basket Reallocated Amount less the Second Lien Incremental Usage Amount plus
(2) the aggregate amount of (w) voluntary prepayments, redemptions or repurchases of Incremental Term Loans and Permitted Incremental Equivalent Debt (other than any Permitted Incremental Equivalent Debt that is a revolving credit facility) (including purchases of Incremental Term Loans or Permitted Incremental Equivalent Debt by Holdings, the Borrower or any of its Subsidiaries at or below par, in which case the amount of voluntary prepayments of such Incremental Term Loans or Permitted Incremental Equivalent Debt shall be deemed not to exceed the actual purchase price of such Loans or Permitted Incremental Equivalent Debt below par), in each case, only to the extent such Incremental Term Loans or Permitted Incremental Equivalent Debt was incurred in reliance on clause (A)(1) above, (x) voluntary permanent commitment reductions in respect of Incremental Revolving Commitments or Permitted Incremental Equivalent Debt consisting of revolving credit commitments, in each case, to the extent such Incremental Revolving Commitments or Permitted Incremental Equivalent Debt was incurred in reliance on clause (A)(1) above, (y) voluntary prepayments, redemption or repurchase of Second Lien Incremental Usage Amount Debt (including purchases of Second Lien Incremental Usage Amount Debt by Holdings, the Borrower or any of its Subsidiaries) and (z) voluntary prepayments, redemptions or repurchases of any Credit Agreement Refinancing Indebtedness, Other Loans, Refinancing Indebtedness or other Indebtedness, in each case, previously applied to the prepayment, redemption or repurchase of any Incremental Term Loans and Permitted Incremental Equivalent Debt (other than any Permitted Incremental Equivalent Debt that is a revolving credit facility) incurred in reliance on clause (A)(1) above or any Second Lien Incremental Usage Amount Debt, in the case of this clause (z), so long as such prepayment, redemption or repurchase was not previously included in clause (w) or clause (y) above; other than, in each case under clauses (w), (y) and (z), from proceeds of long-term Indebtedness (other than revolving credit facilities), plus
(B) (x) in the case of any Incremental Loans or Incremental Commitments that effectively extend the Maturity Date of, or refinance, any Facility, an amount equal to the portion of the Facility to be replaced with (or refinanced by) such Incremental Loans or Incremental Commitments and (y) in the case of any Incremental Loans or Incremental Commitments that effectively replace any Commitment or Loan that is terminated or cancelled in accordance with Section 3.07, an amount equal to the portion of the relevant terminated or cancelled Commitment or Loan, plus

(C) solely to the extent not in duplication of prepayments, redemptions, repurchases or permanent commitment reductions described in Section 2.14(4)(f)(A)(2), the aggregate amount of (x) voluntary prepayments, redemptions or repurchases of Term Loans and Permitted Incremental Equivalent Debt (other than any Permitted Incremental Equivalent Debt that is a revolving credit facility) (including purchases of Term Loans or Permitted Incremental Equivalent Debt by Holdings, the Borrower or any of its Subsidiaries, (y) voluntary permanent commitment reductions in respect of Revolving Commitments or Permitted Incremental Equivalent Debt consisting of revolving credit commitments and (z) voluntary prepayments, redemptions or repurchases of any Credit Agreement Refinancing Indebtedness, Other Loans, Refinancing Indebtedness or other Indebtedness, in each case, previously applied to the prepayment, redemption or repurchase of any Term Loans and Permitted Incremental Equivalent Debt (other than any Permitted Incremental Equivalent Debt that is a revolving credit facility), in the case of this clause (z), so long as such prepayment, redemption or repurchase was not previously included in clause (x) above; other than, in each case under clauses (x) and (z), from proceeds of long-term Indebtedness (other than revolving credit facilities), plus

(D) an unlimited amount, so long as in the case of this clause (D) only,

(x) in the case of Incremental Loans or Incremental Revolving Commitments secured by Liens on all or a portion of the Collateral on a basis that is equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies), either (I) the First Lien Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed 4.25 to 1.00 (including in connection with an acquisition or other similar Investment permitted under this Agreement) or (II) to the extent such Incremental Loans or Incremental Revolving Commitments are incurred in connection with an acquisition or other similar Investment permitted under this Agreement, the First Lien Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence is no greater than the First Lien Net Leverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans or establishment of Incremental Revolving Commitments (in each case under clauses (I) and (II), in the case of an incurrence of Incremental Revolving Commitments, assuming such Incremental Revolving Commitments are fully drawn and calculating the First Lien Net Leverage Ratio without netting the cash proceeds from such Incremental Loans then proposed to be incurred),

(y) in the case of Incremental Loans or Incremental Revolving Commitments secured by Liens on all or a portion of the Collateral on a basis that is junior in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement, either (I) the Secured Net Leverage Ratio for
the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed 5.25 to 1.00 (including in connection with an acquisition or other similar Investment permitted under this Agreement) or (II) to the extent such Incremental Loans or Incremental Revolving Commitments are incurred in connection with an acquisition or other similar Investment permitted under this Agreement, the Secured Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, is no greater than the Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans or establishment of Incremental Revolving Commitments (in each case under clauses (I) and (II), in the case of an incurrence of Incremental Revolving Commitments, assuming such Incremental Revolving Commitments are fully drawn and calculating the Secured Net Leverage Ratio without netting the cash proceeds from such Incremental Loans then proposed to be incurred) and

(z) in the case of Incremental Loans or Incremental Revolving Commitments that are unsecured, (i) the Total Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed 5.50 to 1.00 (including in connection with an acquisition or other similar Investment permitted under this Agreement) or (ii) to the extent such Incremental Loans or Incremental Revolving Commitments are incurred in connection with an acquisition or other Investment permitted under this Agreement, the Total Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence is no greater than the Total Net Leverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans or establishment of Incremental Revolving Commitments (in each case under clauses (I) and (II), in the case of an incurrence of Incremental Revolving Commitments, assuming such Incremental Revolving Commitments are fully drawn and calculating the Total Net Leverage Ratio without netting the cash proceeds from such Incremental Loans then proposed to be incurred);

the amount available under clauses (A) through (D), the “Available Incremental Amount”). The Borrower may elect to use clause (D) of the Available Incremental Amount regardless of whether the Borrower has capacity under clauses (A), (B) or (C) of the Available Incremental Amount. Further, the Borrower may elect to use clause (D) of the Available Incremental Amount prior to using clauses (A), (B) or (C) of the Available Incremental Amount, and if both clause (D) and clauses (A), (B) or (C) of the Available Incremental Amount are available and the Borrower does not make an election, then the Borrower will be deemed to have elected to use clause (D) of the Available Incremental Amount. In addition, any Indebtedness originally designated as incurred pursuant to clauses (A), (B) or (C) of the Available Incremental Amount shall be automatically reclassified as incurred under clause (D) of the Available Incremental Amount at such time as the Borrower would meet the applicable leverage or coverage-based incurrence test at such time on a pro forma basis.

(5) Required Terms. The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Loans and Incremental Revolving Commitments, as the case may be, of any Class and any Loan Increase shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to the Closing Date Term Loans or Closing Date Revolving Facility, as applicable, existing on the Incremental Facility Closing Date, shall
either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith), (B) be not materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of the Closing Date Term Loans or Closing Date Revolving Facility, as applicable, except with respect to (x) covenants and other terms applicable to any period after the Latest Maturity Date in effect immediately prior to the incurrence of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Loans and Incremental Revolving Commitments, as the case may be, or (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; provided that, notwithstanding anything to the contrary herein, if any such terms of any Incremental Revolving Loans and Incremental Revolving Commitments contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Revolving Facility, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of the Revolving Facility or (C) if neither clause (A) or (B) are satisfied, such terms, provisions and documentation shall be reasonably satisfactory to the Administrative Agent (it being understood that, at Borrower’s election, to the extent any term or provision is added for the benefit of (x) the Lenders of Incremental Term Loans, no consent shall be required from the Administrative Agent to the extent that such term or provision is also added (or the features of such term are provided) for the benefit of the Lenders of the Closing Date Term Loans or (y) the Lenders under Incremental Revolving Commitments, no consent shall be required from the Administrative Agent to the extent that such term or provision is also added (or the features of such term are provided) for the benefit of the Lenders of the Closing Date Revolving Facility); further, provided, that in the case of a Term Loan Increase or a Revolving Commitment Increase, the terms, provisions and documentation of such Term Loan Increase or a Revolving Commitment Increase shall be identical (other than with respect to upfront fees, OID or similar fees, it being understood that, if required to consummate such Loan Increase transaction, the interest rate margins and rate floors may be increased, any call protection provision may be made more favorable to the applicable existing Lenders and additional upfront or similar fees may be payable to the lenders providing the Loan Increase) to the applicable Term Loans or Revolving Commitments being increased, in each case, as existing on the Incremental Facility Closing Date (provided that if such Incremental Term Loans are to be “fungible” with the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, notwithstanding any other conditions specified in this Section 2.14(5), the amortization schedule for such “fungible” Incremental Term Loan may provide for amortization in such other percentage(s) to be agreed by Borrower and the Administrative Agent to ensure that the Incremental Term Loans will be “fungible” with the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable). In any event:

(a) the Incremental Term Loans:

(i) (x) shall rank equal in priority in right of payment with the First Lien Obligations under this Agreement and (y) shall either (1) rank equal (but without regard to the control of remedies) or junior in priority of right of security with the First Lien Obligations under this Agreement (subject to the applicable Intercreditor Agreement) or (2) be unsecured, in each case as applicable pursuant to clause (4)(c) above,

(ii) shall not mature earlier than the Original Term Loan Maturity Date,

(iii) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Incremental Term Loans,
(iv) subject to clause (5)(a)(iii) above and clause (5)(c) below, respectively, shall have amortization and an Applicable Rate determined by the Borrower and the applicable Incremental Term Lenders,

(v) may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Term Loans hereunder (except that, unless otherwise permitted under this Agreement, such Incremental Term Loans may not participate on a greater than a pro rata basis as compared to any earlier maturing Class of Term Loans constituting First Lien Obligations in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), as specified in the applicable Incremental Amendment,

(vi) shall be denominated in Dollars, Euros or, subject to the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned), another currency as determined by the Borrower and the applicable Incremental Term Lenders, and

(vii) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

(b) the Incremental Revolving Commitments and Incremental Revolving Loans:

(i) (x) shall rank equal in priority in right of payment with the First Lien Obligations under this Agreement and (y) shall either (1) rank equal (but without regard to the control of remedies) or junior in priority of right of security with the First Lien Obligations under this Agreement or (2) be unsecured, in each case as applicable pursuant to clause (4)(c) above,

(ii) shall not mature earlier than the Original Revolving Facility Maturity Date, and shall not be subject to amortization,

(iii) shall provide that the borrowing and repayment (except for (1) payments of interest and fees at different rates on Incremental Revolving Commitments (and related outstanding Incremental Revolving Loans), (2) repayments required upon the Maturity Date of any Revolving Commitments, (3) repayments made in connection with any refinancing of Revolving Commitments and (4) repayment made in connection with a permanent repayment and termination of Commitments) of Revolving Loans with respect to Incremental Revolving Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis with all other outstanding Revolving Commitments existing on such Incremental Facility Closing Date,

(iv) subject to the provisions of Section 2.03(13) in connection with Letters of Credit which mature or expire after a Maturity Date at any time Incremental Revolving Commitments with a later Maturity Date are outstanding, shall provide that all Letters of Credit shall be participated on a pro rata basis by each Lender with a Revolving Commitment in accordance with its percentage of the Revolving Commitments existing on the Incremental Facility Closing Date (and except as provided in Section 2.03(13), without giving effect to changes thereto on an earlier Maturity Date with respect to Letters of Credit theretofore incurred or issued),

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(v) shall provide that the permanent repayment of Revolving Loans with respect to, and termination of, Incremental Revolving Commitments after the associated Incremental Facility Closing Date may be made on a pro rata basis or less than a pro rata basis or greater than a pro rata basis, in each case, with all other Revolving Commitments existing on such Incremental Facility Closing Date,

(vi) shall provide that assignments and participations of Incremental Revolving Commitments and Incremental Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans existing on the Incremental Facility Closing Date,

(vii) shall provide that any Incremental Revolving Commitments may constitute a separate Class or Classes, as the case may be, of Commitments from the Classes constituting the applicable Revolving Commitments prior to the Incremental Facility Closing Date; provided at no time shall there be Revolving Commitments hereunder (including Incremental Revolving Commitments and any original Revolving Commitments) which have more than four (4) different Maturity Dates unless otherwise agreed to by the Administrative Agent,

(viii) shall have an Applicable Rate determined by the Borrower and the applicable Incremental Revolving Lenders,

(ix) shall be denominated in Dollars or, subject to the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned), another currency as determined by the Borrower and the applicable Incremental Revolving Lenders and

(x) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

(c) the amortization schedule applicable to any Incremental Term Loans and the All-In Yield applicable to the Incremental Term Loans of each Class shall be determined by the Borrower and the applicable Incremental Term Lenders and shall be set forth in each applicable Incremental Amendment; provided, however, that (i) with respect to any syndicated Dollar-denominated Class of Incremental Term Loans that rank equal in priority of right of security with the First Lien Obligations under this Agreement (but without regard to the control of remedies), the All-In Yield applicable to such Incremental Term Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Closing Date USD Term Loans, plus 50 basis points per annum unless the Applicable Rate (together with, as provided in the proviso below, the Eurodollar Rate or Base Rate floor) with respect to the Closing Date USD Term Loans is increased so as to cause the then applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Closing Date USD Term Loans, minus 50 basis points per annum; provided that any increase in All-In Yield on the Closing Date USD Term Loans due to the application of a Eurodollar Rate or Base Rate floor on any Incremental Term Loan shall be effected solely through an increase in (or implementation of, as applicable) the Eurodollar Rate or Base Rate floor applicable to such Closing Date USD Term Loans and (ii) with respect to any syndicated Euro-denominated Class of Incremental Term Loans that rank equal in priority of right of security with the First Lien Obligations under this Agreement (but without regard to the control of remedies), the All-In Yield applicable to such Incremental Term Loans shall not be greater than the applicable All-In Yield payable pursuant to
the terms of this Agreement as amended through the date of such calculation with respect to Closing Date Closing Date Euro Term Loans, plus 50 basis points per annum unless the Applicable Rate (together with, as provided in the proviso below, the EURIBOR Rate floor) with respect to the Closing Date Closing Date Euro Term Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the Closing Date Closing Date Euro Term Loans to equal the All-In Yield then applicable to the Incremental Term Loans, minus 50 basis points per annum; provided that any increase in All-In Yield on the Closing Date Euro Term Loans due to the application of a EURIBOR Rate floor on any Incremental Term Loan shall be effected solely through an increase in (or implementation of, as applicable) the EURIBOR Rate floor applicable to such Closing Date Euro Term Loans.

(6) Incremental Amendment. Commitments in respect of Incremental Term Loans and Incremental Revolving Commitments shall become Commitments (or in the case of an Incremental Revolving Commitment to be provided by an existing Revolving Lender, an increase in such Lender’s applicable Revolving Commitment), under this Agreement pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Incremental Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. In connection with any Incremental Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Loans are provided with the benefit of the applicable Loan Documents. The Borrower will use the proceeds (if any) of the Incremental Loans for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Commitments or Incremental Loans unless it so agrees.

Notwithstanding anything to the contrary in Section 10.01, the Administrative Agent is expressly permitted, without the consent of any Lenders or any Issuing Bank, to amend the Loan Documents (including Section 2.07) to the extent necessary or appropriate in the reasonable discretion of the Administrative Agent to give effect to any Incremental Commitment pursuant to this Section 2.14 (which may be in the form of an amendment and restatement), including to provide to the Lenders of any Class of Loans or Commitments hereunder the benefit of any term or provision that is added under any Incremental Amendment for the benefit of the Lenders of a Class of Incremental Commitments (including to the extent necessary or advisable to allow any Class of Incremental Commitments to be an Incremental Increase).

(7) Reallocation of Revolving Exposure. Upon any Incremental Facility Closing Date on which Incremental Revolving Commitments are effected through an increase in the Revolving Commitments with respect to any existing Revolving Facility pursuant to this Section 2.14, (a) each of the Revolving Lenders under such Facility shall assign to each of the Incremental Revolving Lenders, and each of the Incremental Revolving Lenders shall purchase from each of the Revolving Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Lenders and Incremental Revolving Lenders ratable in accordance with their Revolving Commitments after giving effect to the addition of such Incremental Revolving Commitments to the Revolving Commitments, (b) each Incremental Revolving Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Loan and (c) each Incremental Revolving Lender shall become a Lender with respect to the Incremental Revolving Commitments and all matters relating thereto. The Administrative Agent and the Lenders hereby agree that the minimum borrowing and prepayment requirements in Section 2.02 and 2.05(1) of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

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SECTION 2.14 Refinancing Amendments.

(1) At any time after the Closing Date, the Borrower may obtain, from any Lender or any Additional Lender (it being understood that (i) no Lender shall be required to provide any Other Loan without its consent, (ii) Affiliated Lenders may not provide Other Revolving Commitments and (iii) Other Term Loans provided by Affiliated Lenders shall be subject to the limitations set forth in Section 10.07(b)), Other Loans to refinance all or any portion of the applicable Class or Classes of Loans then outstanding under this Agreement which will be made pursuant to Other Term Loan Commitments, in the case of Other Term Loans, and pursuant to Other Revolving Commitments, in the case of Other Revolving Loans, in each case pursuant to a Refinancing Amendment; provided that such Other Loans and Other Revolving Commitments (i) shall rank equal in priority in right of payment with the other Loans and Commitments hereunder, (ii) shall be unsecured or rank pari passu (without regard to the control of remedies) or junior in right of security with any First Lien Obligations under this Agreement and, if secured on a junior basis, shall be subject to an applicable Intercreditor Agreement(s), (iii) if secured, shall not be secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (iv) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors, (v) such Other Loans and Other Revolving Commitments (i) shall rank equal in priority in right of payment with the other Loans and Commitments hereunder, (ii) shall be unsecured or rank pari passu (without regard to the control of remedies) or junior in right of security with any First Lien Obligations under this Agreement and, if secured on a junior basis, shall be subject to an applicable Intercreditor Agreement(s), (iii) if secured, shall not be secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (iv) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors, (v) shall have interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and prepayment terms and premiums as may be agreed by the Borrower and the Lenders thereof and/or (B) may provide for additional fees and/or premiums payable to the Lenders providing such Other Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Refinancing Amendment, (vi) may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (vii) will have a final maturity date no earlier than, and, in the case of Other Term Loans, will have a Weighted Average Life to Maturity equal to or greater than, the Term Loans or Revolving Commitments being refinanced and (viii) will have such other terms and conditions (other than as provided in foregoing clauses (ii) through (vii)) that either, at the option of the Borrower, (1) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Other Loans or Other Revolving Commitments (as determined by the Borrower in good faith) or (2) if otherwise not consistent with the terms of such Class of Loans or Commitments being refinanced, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Class of Loans or Commitments being refinanced, except with respect to (x) covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing or (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; provided that, notwithstanding anything to the contrary contained herein, if any such terms of the Other Revolving Commitments contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Revolving Facility, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Class of Revolving Commitments. Any Other Term Loans may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Term Loans hereunder (except that, unless otherwise permitted under this Agreement or unless the Class of Term Loans being refinanced was so entitled to participate on a greater than a pro rata basis in such mandatory prepayments, such Other Term Loans may not participate on a greater than a pro rata basis as compared to any earlier maturing Class of Term Loans. Any Other Term Loans shall be subject to the limitations set forth in Section 10.07(b).
constituting First Lien Obligations in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i), as specified in the applicable Refinancing Amendment. All Other Revolving Commitments shall provide that all borrowings under the applicable Revolving Commitments and repayments thereunder shall be made on a pro rata basis (except for (1) payments of interest and fees at different rates on Other Revolving Commitments (and related outstanding Other Revolving Loans), (2) repayments required upon the Maturity Date of the Revolving Commitments, (3) repayments made in connection with any refinancing of Revolving Commitments and (4) repayment made in connection with a permanent repayment and termination of Commitments). In connection with any Refinancing Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Other Loans or Other Revolving Commitments are provided with the benefit of the applicable Loan Documents.

(2) Each Class of Other Commitments and Other Loans incurred under this Section 2.15 shall be in an aggregate principal amount that is not less than $5.0 million. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Commitments and Other Loans incurred pursuant thereto (including any amendments necessary to treat the Other Loans and/or Other Commitments as Loans and Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15.

(3) This Section 2.15 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.15 may be amended with the consent of the Required Lenders (or the applicable Required Facility Lenders, if applicable).

SECTION 2.16 Extensions of Loans.

(1) Extension of Term Loans. The Borrower may at any time and from time to time request that all or a portion of the Term Loans of any Class (each, an “Existing Term Loan Class”) be converted or exchanged to extend the scheduled Maturity Date(s) of any payment of principal with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so extended, “Extended Term Loans”) and to provide for other terms consistent with this Section 2.16. Prior to entering into any Extension Amendment with respect to any Extended Term Loans, the Borrower shall provide written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Class, with such request offered equally to all such Lenders of such Existing Term Loan Class) (each, a “Term Loan Extension Request”) setting forth the proposed terms of the Extended Term Loans to be established, which terms shall be identical in all material respects to the Term Loans of the Existing Term Loan Class from which they are to be extended except that (i) the scheduled final maturity date shall be extended and all or any of the scheduled amortization payments, if any, of all or a portion of any principal amount of such Extended Term Loans may be delayed to later dates than the scheduled amortization, if any, of principal of the Term Loans of such Existing Term Loan Class (with any such delay resulting in a corresponding adjustment to the scheduled amortization payments reflected in the Extension Amendment, the Incremental Amendment, the Refinancing Amendment or any other amendment, as the case may be, with respect to the Existing Term Loan Class from which such Extended Term Loans were extended), (ii)(A) the interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and voluntary prepayment terms and premiums with respect to
the Extended Term Loans may be different than those for the Term Loans of such Existing Term Loan Class and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Term Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) the Extended Term Loans may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (iv) any Extended Term Loans may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Term Loans hereunder (except that, unless otherwise permitted under this Agreement, such Extended Term Loans may not participate on a greater than pro rata basis as compared to any earlier maturing Class of Term Loans in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), in each case as specified in the respective Term Loan Extension Request and (v) the Extension Amendment may provide for other covenants and terms that apply to any period after the Latest Maturity Date in respect of Term Loans that is in effect immediately prior to the establishment of such Extended Term Loans. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Class converted into Extended Term Loans pursuant to any Term Loan Extension Request. Any Extended Term Loans extended pursuant to any Term Loan Extension Request shall be designated a series (each, a “Term Loan Extension Series”) of Extended Term Loans for all purposes of this Agreement and shall constitute a separate Class of Loans from the Existing Term Loan Class from which they were extended; provided that any Extended Term Loans amended from an Existing Term Loan Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Class.

(2) Extension of Revolving Commitments. The Borrower may at any time and from time to time request that all or a portion of the Revolving Commitments of any Class (each, an “Existing Revolving Class”) be converted or exchanged to extend the scheduled Maturity Date(s) of any payment of principal with respect to all or a portion of any principal amount of such Revolving Commitments (any such Revolving Commitments which have been so extended, “Extended Revolving Commitments”) and to provide for other terms consistent with this Section 2.16. Prior to entering into any Extension Amendment with respect to any Extended Revolving Commitments, the Borrower shall provide written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolving Class, with such request offered equally to all such Lenders of such Existing Revolving Class) (each, a “Revolving Extension Request”) setting forth the proposed terms of the Extended Revolving Commitments to be established, which terms shall be identical in all material respects to the Revolving Commitments of the Existing Revolving Class from which they are to be extended except that (i) the scheduled final maturity date shall be extended to a later date than the scheduled final maturity date of the Revolving Commitments of such Existing Revolving Class; provided, however, that at no time shall there be Classes of Revolving Commitments hereunder (including Extended Revolving Commitments) which have more than four (4) different Maturity Dates (unless otherwise consented to by the Administrative Agent), (ii)(A) the interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and voluntary prepayment terms and premiums with respect to the Extended Revolving Commitments may be different than those for the Revolving Commitments of such Existing Revolving Class and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Revolving Commitments in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) all borrowings under the applicable Revolving Commitments (i.e., the Existing Revolving Class and the Extended Revolving Commitments of the applicable Revolving Extension Series) and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Commitments (and related outstanding Extended Revolving Loans), (II) repayments required upon the Maturity Date of the non-extending Revolving Commitments, (III) repayments made in connection with any refinancing of Revolving Commitments and (IV) repayments made in connection with a permanent repayment and
termination of Commitments), and (iv) the Extension Amendment may provide for other covenants and terms that apply to any period after the Latest Maturity Date in respect of Revolving Commitments that is in effect immediately prior to the establishment of such Extended Revolving Commitments. No Lender shall have any obligation to agree to have any of its Revolving Commitments of any Existing Revolving Class converted into Extended Revolving Commitments pursuant to any Revolving Extension Request. Any Extended Revolving Commitments extended pursuant to any Revolving Extension Request shall be designated a series (each, a “Revolving Extension Series”) of Extended Revolving Commitments for all purposes of this Agreement and shall constitute a separate Class of Revolving Commitments from the Existing Revolving Class from which they were extended; provided that any Extended Revolving Commitments amended from an Existing Revolving Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolving Extension Series with respect to such Existing Revolving Class.

(3) Extension Request. The Borrower shall provide the applicable Extension Request to the Administrative Agent at least five (5) Business Days (or such shorter period as the Administrative Agent may determine in its sole discretion) prior to the date on which Lenders under the applicable Existing Term Loan Class or Existing Revolving Class, as applicable, are requested to respond. Any Lender holding a Term Loan under an Existing Term Loan Class (each, an “Extending Term Lender”) wishing to have all or a portion of its Term Loans of an Existing Term Loan Class or Existing Term Loan Classes, as applicable, subject to such Extension Request converted or exchanged into Extended Term Loans, and any Revolving Lender with a Revolving Commitment under an Existing Revolving Class (each, an “Extending Revolving Lender”) wishing to have all or a portion of its Revolving Commitments of an Existing Revolving Class or Existing Revolving Classes, as applicable, subject to such Extension Request converted or exchanged into Extended Revolving Commitments, as applicable, shall notify the Administrative Agent (each, an “Extension Election”) on or prior to the date specified in such Extension Request of the amount of its Term Loans or Revolving Commitments, as applicable, which it has elected to convert or exchange into Extended Term Loans or Extended Revolving Commitments, as applicable, which it has elected to convert or exchange into Extended Term Loans or Extended Revolving Commitments, as applicable. In the event that the aggregate principal amount of Term Loans and/or Revolving Commitments, as applicable, subject to Extension Elections exceeds the amount of Extended Term Loans and/or Extended Revolving Commitments, respectively, as applicable, subject to Extension Elections shall be converted or exchanged into Extended Term Loans and/or Extended Revolving Commitments, respectively, on a pro rata basis (subject to such rounding requirements as may be established by the Administrative Agent) based on the aggregate principal amount of Term Loans or Revolving Commitments, as applicable, included in each such Extension Election or as may be otherwise agreed to in the applicable Extension Amendment.

(4) Extension Amendment. Extended Term Loans and Extended Revolving Commitments shall be established pursuant to an amendment (each, an “Extension Amendment”) to this Agreement (which, notwithstanding anything to the contrary set forth in Section 10.01, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Term Loans and/or Extended Revolving Commitments established thereby, as the case may be) executed by the Borrower, the Administrative Agent and the Extending Lenders, it being understood that such Extension Amendment shall not require the consent of any Lender other than (A) the Extending Lenders with respect to the Extended Term Loans or Extended Revolving Commitments, as applicable, established thereby and (B) with respect to any extension of the Revolving Commitments that results in an extension of Issuing Bank’s obligations with respect to Letters of Credit, the consent of such Issuing Bank). Each request for an Extension Series of Extended Term Loans or Extended Revolving Commitments proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than $5.0 million (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount), and the Borrower may condition the effectiveness of any
Extension Amendment on an Extension Minimum Condition, which may be waived by the Borrower in its sole discretion. In addition to any terms and changes required or permitted by Sections 2.16(1) and (2), each of the parties hereto agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent necessary to (i) in respect of each Extension Amendment in respect of Extended Term Loans, amend the scheduled amortization payments pursuant to Section 2.07 or the applicable Incremental Amendment, Extension Amendment, Refinancing Amendment or other amendment, as the case may be, with respect to the Existing Term Loan Class from which the Extended Term Loans were exchanged to reduce each scheduled repayment amount for the Existing Term Loan Class in the same proportion as the amount of Term Loans of the Existing Term Loan Class is to be reduced pursuant to such Extension Amendment (it being understood that the amount of any repayment amount payable with respect to any individual Term Loan of such Existing Term Loan Class that is not an Extended Term Loan shall not be reduced as a result thereof); (ii) reflect the existence and terms of the Extended Term Loans or Extended Revolving Commitments, as applicable, incurred pursuant thereto; (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto and (iv) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment. In connection with any Extension Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Extended Term Loans and/or Extended Revolving Commitments are provided with the benefit of the applicable Loan Documents.

(5) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Term Loan Class and/or Existing Revolving Class is converted or exchanged to extend the related scheduled maturity date(s) in accordance with paragraphs (1) and (2) of this Section 2.16, in the case of the existing Term Loans or Revolving Commitments, as applicable, of each Extending Lender, the aggregate principal amount of such existing Loans shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Term Loans and/or Extended Revolving Commitments, respectively, so converted or exchanged by such Lender on such date, and the Extended Term Loans and/or Extended Revolving Commitments shall be established as a separate Class of Loans, except as otherwise provided under Sections 2.16(1) and (2). Subject to the provisions of Section 2.03(13) in connection with Letters of Credit which mature or expire after a Maturity Date at any time Extended Revolving Commitments with a later Maturity Date are outstanding, all Letters of Credit shall be participated on a pro rata basis by each Lender with a Revolving Commitment in accordance with its percentage of the Revolving Commitments existing on the date of the Extension of such Extended Revolving Commitments (and except as provided in Section 2.03(13), without giving effect to changes thereto on an earlier Maturity Date with respect to Letters of Credit theretofore incurred or issued).

(6) In the event that the Administrative Agent determines in its sole discretion that the allocation of Extended Term Loans and/or Extended Revolving Commitments of a given Extension Series to a given Lender was incorrectly determined as a result of manifest administrative error in the receipt and processing of an Extension Election timely submitted by such Lender in accordance with the procedures set forth in the applicable Extension Amendment, then the Administrative Agent, the Borrower and such affected Lender may (and hereby are authorized to), in their sole discretion and without the consent of any other Lender, enter into an amendment to this Agreement and the other Loan Documents (each, a "Corrective Extension Amendment") within 15 days following the effective date of such Extension Amendment, as the case may be, which Corrective Extension Amendment shall (i) provide for the conversion or exchange and extension of Term Loans under the Existing Term Loan Class, or of Revolving Commitments under the Existing Revolving Class, in either case, in such amount

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as is required to cause such Lender to hold Extended Term Loans or Extended Revolving Commitments, as applicable, of the applicable Extension Series into which such other Term Loans or Revolving Commitments were initially converted or exchanged, as the case may be, in the amount such Lender would have held had such administrative error not occurred and had such Lender received the minimum allocation of the applicable Loans or Commitments to which it was entitled under the terms of such Extension Amendment, in the absence of such error, (ii) be subject to the satisfaction of such conditions as the Administrative Agent, the Borrower and such Extending Term Lender or Extending Revolving Lender, as applicable, may agree, and (iii) effect such other amendments of the type (with appropriate reference and nomenclature changes) described in the penultimate sentence of Section 2.16(4).

(7) No conversion or exchange of Loans or Commitments pursuant to any Extension Amendment in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(8) This Section 2.16 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.16 may be amended with the consent of the Required Lenders (or the applicable Required Facility Lenders, if applicable).

SECTION 2.17 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender’s right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders or the relevant Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the relevant Issuing Banks against that Defaulting Lender as a result of that Defaulting Lender’s breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (i) such payment is a payment of the principal amount of any Loans or L/C Borrowings in

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respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(c) **Certain Fees.** That Defaulting Lender (i) shall not be entitled to receive any commitment fee pursuant to Section 2.09(1) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (ii) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.03(9).

(d) **Reallocation of Applicable Percentages to Reduce Fronting Exposure.** During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the “Applicable Percentage” of each Non-Defaulting Lender’s Revolving Loans and L/C Obligations shall be computed without giving effect to the Commitment of that Defaulting Lender; provided that the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Loans of that Non-Defaulting Lender.

(2) **Defaulting Lender Cure.** If the Borrower, the Administrative Agent and the Issuing Banks agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(1)(d)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided further that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

**SECTION 2.18 Loan Repricing Protection.** In the event that, on or prior to the twelve month anniversary of the Closing Date, the Borrower (a) makes any prepayment of any Closing Date Term Loans in connection with any Repricing Transaction with respect to such Closing Date Term Loans or (b) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall pay to the Administrative Agent, for the ratably account of each applicable Lender, (i) in the case of clause (a), a prepayment premium of 1.00% of the aggregate principal amount of such Closing Date Term Loans being prepaid and (ii) in the case of clause (b), a payment equal to 1.00% of the aggregate principal amount of the applicable Closing Date Term Loans outstanding immediately prior to such amendment that are subject to such Repricing Transaction.
SECTION 3.01 Taxes.

(1) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent is required by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party’s account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(b) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(c) within thirty days after paying any sum from which it is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (a) above to pay (or, in each case, as soon as reasonably practicable thereafter), the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its legal ineligibility to do so.
Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of IRS Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H (any such certificate, a “United States Tax Compliance Certificate”) and (B) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), IRS Form W-8IMY (or any successor forms) of such Foreign Lender, accompanied by an IRS Form W-8ECI, Form W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (provided that, if a Lender is a partnership (and not a participating Lender) and if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner(s)), or

(v) two properly completed and duly signed copies of any other documentation prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time...
or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this paragraph (c), the term “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender’s owner and, as applicable, such Lender.

Notwithstanding any other provision of this Section 3.01(3), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver. Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(3).

(4) Without duplication of other amounts payable by the Borrower pursuant to Section 3.01(2), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or the Administrative Agent (each a “Tax Indemnitee”), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) (other than any interest, penalties and other costs determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Tax Indemnitee), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority; provided that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Tax Indemnitee will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 3.01(6)) so long as such efforts would not, in the sole determination of such Tax Indemnitee (exercised in good faith), result in any additional out-of-pocket costs or expenses not reimbursed by such Loan Party or be otherwise materially disadvantageous to such Tax Indemnitee. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund (whether received in cash or applied as a credit against any other cash Taxes payable) of any Non-Excluded Taxes or Other Taxes in respect of which it has received indemnification payments or additional amounts under this Section 3.01, then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(6), in no event

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will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this Section 3.01(6) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax Indemnitee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower whichever of the following is applicable: (i) if the Administrative Agent is a “United States person” within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Administrative Agent is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (ii) with respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is a U.S. branch and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. Notwithstanding anything to the contrary in this Section 3.01(7), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(8) The agreements in this Section 3.01 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(9) For the avoidance of doubt, for purposes of this Section 3.01, the term “Lender” includes any Issuing Bank.

SECTION 3.02 Illegality.

(1) If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such
illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(2) If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the EURIBOR Rate, or to determine or charge interest rates based upon the EURIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Euros in the European interbank market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue EURIBOR Rate Loans or to convert Base Rate Loans to EURIBOR Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of or continuation of EURIBOR Rate Loans and, unless the Administrative Agent (acting on instructions of the Required Lenders) and the Borrower otherwise agree to a substitute rate (it being understood that the Administrative Agent, Required Lenders and Borrower shall negotiate in good faith to amend the definition of “EURIBOR Rate” and other applicable provisions to preserve the original intent thereof in light of such change) such EURIBOR Rate Loans shall bear interest at such rate as the Administrative Agent (acting on instructions of the Required Lenders) shall determine adequately and fairly reflects the cost to the Euro Term Lenders of making or maintaining such EURIBOR Rate Loans for the applicable Interest Period plus the applicable percentage set forth in the definition of Applicable Rate with respect to such EURIBOR Rate Loans.

SECTION 3.03 Inability to Determine Rates.

(1) If the Administrative Agent (in the case of clause (1) or (2) below) or the Required Lenders (in the case of clause (3) below) reasonably determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that

(a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan,

(b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or

(c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,
the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain
Eurodollar Rate Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Eurodollar
Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until
the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any
pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such
request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(2) If the Administrative Agent (in the case of clause (1) or (2) below) or the Required Lenders (in the case of clause (3) below) reasonably
determine that for any reason in connection with any request for a EURIBOR Rate Loan or continuation thereof that

(a) Euro deposits are not being offered to banks in the European interbank market for the applicable amount and Interest Period of such
EURIBOR Rate Loan,

(b) adequate and reasonable means do not exist for determining the EURIBOR Rate for any requested Interest Period with respect to a
proposed EURIBOR Rate Loan, or

(c) the EURIBOR Rate for any requested Interest Period with respect to a proposed EURIBOR Rate Loan does not adequately and fairly
reflect the cost to such Lenders of funding such Loan,

the Administrative Agent will promptly so notify the Borrower and each Euro Term Lender. Thereafter, the obligation of the Lenders to make or
maintain EURIBOR Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice
and, unless the Administrative Agent (acting on instructions of the Required Lenders) and the Borrower otherwise agree to a substitute rate (it being
understood that the Administrative Agent, Required Lenders and Borrower shall negotiate in good faith to amend the definition of “EURIBOR Rate”
and other applicable provisions to preserve the original intent thereof in light of such change) such EURIBOR Rate Loans shall bear interest at such rate
as the Administrative Agent (acting on instructions of the Required Lenders) shall determine adequately and fairly reflects the cost to the Euro Term
Lenders of making or maintaining such EURIBOR Rate Loans for the applicable Interest Period plus the applicable percentage set forth in the definition
of Applicable Rate with respect to such EURIBOR Rate Loans. Upon receipt of such notice, the Borrower may revoke any pending request for a
Borrowing of or continuation of EURIBOR Rate Loans.

SECTION 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Rate Loans and EURIBOR Rate Loans.

(1) Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets
of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Rate Loan or EURIBOR Rate
Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes
covered by Section 3.01 and any Excluded Taxes); or

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(c) impose on any Lender or the London interbank market or European interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans or EURIBOR Rate Loans made by such Lender that is not otherwise accounted for in the definition of “Eurodollar Rate”, “EURIBOR Rate” or this clause (1); and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate or EURIBOR Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) 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), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; provided that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender’s holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender’s holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy), 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), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered; provided that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

SECTION 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan or EURIBOR Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan or EURIBOR Rate Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a Eurodollar Rate Loan or EURIBOR Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Eurodollar Rate Loan or EURIBOR Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the “floor” specified (x) in the proviso to the definition of “Eurodollar Rate” or (y) in the proviso to the definition of “EURIBOR Rate”.

SECTION 3.06 Matters Applicable to All Requests for Compensation

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurodollar Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurodollar Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of Eurodollar Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender’s Eurodollar Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate Loans made by other Lenders, as applicable, are outstanding, such Lender’s Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Eurodollar Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.
(4) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender’s right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender’s intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

**SECTION 3.07 Replacement of Lenders under Certain Circumstances.** If (1) any Lender requests compensation under Section 3.04 or ceases to make Eurodollar Rate Loans or EURIBOR Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (3) any Lender is a Non-Consenting Lender, (4) any Lender becomes a Defaulting Lender or (5) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 and, in the case of a Repricing Transaction, any "prepayment premium" pursuant to Section 2.18 that would otherwise be owed in connection therewith) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender’s Commitment and outstanding Loans and participations in L/C Obligations and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;
(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws;

(vii) any Lender that acts as an Issuing Bank may not be replaced hereunder at any time when it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such Issuing Bank (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such Issuing Bank or the depositing of Cash Collateral into a Cash Collateral Account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Bank) have been made with respect to each such outstanding Letter of Credit; and

(viii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender or Issuing Bank, as the case may be, and (A) in the case of a Lender (other than an Issuing Bank), repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date (including in the case of a Repricing Transaction, any “prepayment premium” pursuant to Section 2.18 that would otherwise be owed in connection therewith) and (B) in the case of an Issuing Bank, repay all Obligations of the Borrower owing to such Issuing Bank relating to the Loans and participations held by such Issuing Bank as of such termination date and Cash Collateralize, cancel or backstop, or provide for the deemed reissuance under another facility, on terms satisfactory to such Issuing Bank any Letters of Credit issued by it; provided that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “Non-Consenting Lender.”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitled the Borrower to require such assignment and delegation cease to apply.

SECTION 3.08 Survival. All of the Borrower’s obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.
Conditions Precedent to Credit Extensions

SECTION 4.01 Conditions to Credit Extensions on Closing Date. The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction (or waiver) of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(1) The Administrative Agent’s receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (other than in the case clause (1)(e) below):

   (a) a Committed Loan Notice;
   (b) executed counterparts of this Agreement and the Guaranty;
   (c) each Collateral Document set forth on Schedule 4.01(1)(c) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with (subject to Section 6.13(2)):
      (i) certificates, if any, representing the Pledged Collateral that is certificated equity of the Borrower and the Loan Parties’ Material Domestic Subsidiaries accompanied by undated stock powers executed in blank; and
      (ii) evidence that all UCC-1 financing statements in the appropriate jurisdiction or jurisdictions for each Loan Party that the Administrative Agent and the Collateral Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;
   (d) certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such jurisdiction), customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party certifying true and complete copies of the Organizational Documents attached thereto and 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;
   (e) a customary legal opinion from Ropes & Gray LLP, counsel to the Loan Parties;
   (f) a certificate of a Responsible Officer certifying that the conditions set forth in Section 4.02 has been satisfied; and
   (g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I.
(2) The First Lien/Second Lien Intercreditor Agreement shall have been duly executed and delivered by the Loan Parties thereto and the Second Lien Administrative Agent.

(3) The Arrangers shall have received (i) the Annual Financial Statements and (ii) the Quarterly Financial Statements. The Arrangers shall have received the Pro Forma Financial Statements.

(4) The representations and warranties of the Borrower 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.

(5) No Default shall exist, or would result from such proposed Credit Extension on the Closing Date or from the application of the proceeds therefrom.

(6) The Administrative Agent or the relevant Issuing Bank (as applicable) shall have received a Request for Credit Extension in accordance with the requirements hereof.

(7) The Administrative Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information in respect of the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested in writing by it at least ten (10) Business Days prior to the Closing Date.

(8) All fees and expenses (in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower)) required to be paid hereunder on the Closing Date shall have been paid, or shall be paid substantially concurrently with the initial Borrowing on the Closing Date.

(9) Substantially concurrently with the initial Borrowing(s) on the Closing Date, the Transactions shall have been consummated from the proceeds of the Facilities.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 Conditions to Credit Extensions after the Closing Date. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, a continuation of Eurodollar Rate Loans or EURIBOR Rate Loans or a Borrowing pursuant to any Incremental Amendment) after the Closing Date is subject to the following conditions precedent:

(1) The representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension; 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.
(2) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(3) The Administrative Agent or the relevant Issuing Bank (as applicable) shall have received a Request for Credit Extension in accordance with the requirements hereof.

(4) Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, a continuation of Eurodollar Rate Loans or EURIBOR Rate Loans or a Borrowing pursuant to an Incremental Amendment) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(1) and 4.02(2) have been satisfied on and as of the date of the applicable Credit Extension.

In addition, solely to the extent the Borrower has delivered to the Administrative Agent a Notice of Intent to Cure pursuant to Section 8.04, no request for a Credit Extension shall be honored after delivery of such notice until the applicable Cure Amount specified in such notice is actually received by the Borrower. For the avoidance of doubt, the preceding sentence shall have no effect on the continuation or conversion of any Loans outstanding.

Article V
Representations and Warranties

The Borrower and, in respect of Sections 5.01, 5.02, 5.04, 5.06, 5.13 and 5.17 only, Holdings, represent and warrant to the Administrative Agent and the Lenders, after giving effect to the Transactions, at the time of each Credit Extension (solely to the extent required to be true and correct for such Credit Extension pursuant to Section 2.14):

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries that is a Material Subsidiary:

(1) is a Person duly organized or formed, 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),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) 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 as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws, orders, injunctions and orders (including the United States Foreign Corrupt Practices Act of 1977 (the “FCPA”)); and
(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person’s Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.03 Governmental Authorization.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws, by general principles of equity and principles of good faith and fair dealing.
SECTION 5.05 Financial Statements; No Material Adverse Effect.

(1) (a) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of (x) in the case of the Annual Financial Statements, the McAfee Business and (y) in the case of the Quarterly Financial Statements, the Borrower and its Subsidiaries, in each case, as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (i) except as otherwise expressly noted therein and (ii) subject, in the case of the Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) The unaudited pro forma consolidated statement of operations of the Borrower for the 12-month period ending on July 1, 2017 (which may be prepared on a combined or other pro forma basis in the good faith judgment of the Borrower with respect to predecessor and successor periods relative to the Original Transactions), prepared after giving effect to the Transactions as if the Transactions had occurred at the beginning of such period (collectively, the “Pro Forma Financial Statements”), copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis the estimated results of operations of the Borrower and its Subsidiaries for the period covered thereby.

(2) Since the Closing Date, 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.

(3) The forecasts of consolidated statements of operations of the Borrower and its Subsidiaries for each fiscal year ending after the Closing Date until the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that:

(a) no forecasts are to be viewed as facts,

(b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or the Investors,

(c) no assurance can be given that any particular forecasts will be realized and

(d) actual results may differ and such differences may be material.

SECTION 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.
SECTION 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

SECTION 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Restricted Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for 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, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility except for such actions that were in compliance with Environmental Law; and (e) to the knowledge of any Loan Party or any Restricted Subsidiary, there are no occurrences, facts, circumstances or conditions which could reasonably be expected to give rise to an Environmental Claim.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), except those which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP.

There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (a) No ERISA Event has occurred or is reasonably expected to occur; and
(b) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA. except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.
(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Laws, and (b) none of Holdings, the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

SECTION 5.12 Subsidiaries.

(1) As of the Closing Date, after giving effect to the Transactions, all of the outstanding Equity Interests in the Borrower and its Restricted Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests that constitute Collateral owned by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents or the Second Lien Credit Documents and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of organization of each Subsidiary, and

(b) the ownership interests of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership.

SECTION 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, pro forma financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.
SECTION 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, "IP Rights") that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and the Subsidiaries, on a consolidated basis, are Solvent.

SECTION 5.17 USA PATRIOT Act; Anti-Terrorism Laws. To the extent applicable, each of the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, and (ii) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other applicable enabling legislation or executive order relating thereto. Neither Holdings, the Borrower nor any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer or employee of Holdings, the Borrower or any of the Restricted Subsidiaries, is currently the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") ("Sanctions"). No proceeds of the Loans will be used by Holdings, the Borrower or any Restricted Subsidiary directly or, to the knowledge of the Borrower, indirectly, for the purpose of financing activities of or with any Person, or in any country, that, at the time of such financing, is the subject of any Sanctions administered by OFAC, except to the extent licensed or otherwise approved by OFAC.

SECTION 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable first priority Lien (subject to Liens permitted by Section 7.01 and to any applicable Intercreditor Agreement) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement, (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01 or (D) any Excluded Assets.
 Article VI

Affirmative Covenants

So long as the Termination Conditions have not been satisfied, the Borrower shall (and, with respect to Sections 6.05(1) and 6.11 only, Holdings shall), and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

SECTION 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) each of the following:

(1) within ninety (90) days after the end of each fiscal year of the Borrower (or, solely for the fiscal year ending on or about December 30, 2017, one hundred and fifty (150) days and solely for the year ending on or about December 29, 2018, one hundred and twenty (120) days) commencing with the fiscal year ending on or about December 30, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations and cash flows for such fiscal year (in the case of such financial statements for the fiscal year ending on or about December 30, 2017, for the period from April 3, 2017 to the last day of such fiscal year), together with related notes thereto, setting forth in each case (commencing with the fiscal year ending on or about December 29, 2018) in comparative form the figures for the previous fiscal year (provided that financial statements or financial data for the fiscal year ending on or about December 30, 2017, for comparative purposes relative to the fiscal year ending on or about December 29, 2018, may be presented on a combined or other pro forma basis prepared in good faith by the Borrower), in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a “going concern” explanatory paragraph or like qualification that is due to (i) the impending maturity of any Indebtedness, (ii) any anticipated inability to satisfy the Financial Covenant or any other financial covenant or (iii) an actual Default of the Financial Covenant or any default with respect to any other financial covenant);

(2) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (or, solely for the fiscal quarter ending on or about September 30, 2017, seventy-five (75) days after the end of such fiscal quarter and solely for the fiscal quarters ending on or about March 31, 2018 and June 30, 2018, sixty (60) days after the end of such fiscal quarter) commencing with the fiscal quarter ended on or about September 30, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) consolidated statement of operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth commencing with the fiscal quarter ending on or about September 29, 2018, (x) in the case of the preceding clause (a), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year and (y) in the case of the preceding clause (b), in comparative form the figures for the corresponding portion of the previous fiscal year (provided that for any fiscal quarter ending in fiscal year 2018, comparative figures of prior fiscal periods shall be limited to
accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with related notes thereto;

(3) within ninety (90) days after the end of each fiscal year of the Borrower (or, solely for the fiscal year ending on or about December 30, 2017, one hundred and fifty (150) days and solely for the year ending on or about December 29, 2018, one hundred and twenty (120) days) commencing with the fiscal year ending on or about December 30, 2017, a consolidated budget for the following fiscal year in form customarily prepared with regard to the Borrower and its Restricted Subsidiaries, which budget shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such budget (it being understood that any projections contained therein are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material); provided that the requirements of this Section 6.01(3) shall not apply at any time following the consummation of the first public offering of the Borrower’s common equity or the common equity of any Parent Company after the Closing Date;

(4) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(1) and 6.01(2), the related unaudited (it being understood that such information may be audited at the option of the Borrower) consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; and

(5) at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to Sections 6.01(1) and 6.01(2) above, to participate in one conference call for Lenders (if requested by the Administrative Agent) to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered, which conference call will only pertain to matters available or distributed to “public side” Lenders; provided that if the Borrower holds a conference call open to the public or holders of any public securities to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently ended measurement period for which financial statements have been delivered pursuant to Sections 6.01(1) or 6.01(2) above, such conference call will be deemed to satisfy the requirements of this Section 6.01(5).

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower’s or such Parent Company’s Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); provided that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may
be audited at the option of the Borrower), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a “going concern” explanatory paragraph or like qualification that is due to (i) the impending maturity of any Indebtedness, (ii) any anticipated inability to satisfy the Financial Covenant or any other financial covenant or (iii) an actual Default of the Financial Covenant or any default with respect to any other financial covenant).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to the Transactions or any other transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements.

SECTION 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02):

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for the fiscal year ended on or about December 30, 2017), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(2) promptly after the same are publicly available, copies of all special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the terms of the Second Lien Credit Agreement so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), (a) a report setting forth the information required by Section 1(a) of the Perfection Certificate (or confirming that there has been no change in such information since the later of the Closing Date or the last report delivered pursuant to this clause (a)) and (b) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list; and
Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower’s (or any Parent Company’s) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower’s behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02) until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents or link and, upon the Administrative Agent’s request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Banks materials or information provided by or on behalf of the Borrower hereunder (collectively, the “Borrower Materials”) by posting the Borrower Materials on Intralinks, SyndTrak, ClearPar or another similar electronic system (the “Platform”) and (b) certain of the Lenders may have personnel who do not wish to have any information with respect to Holdings, their Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person’s securities (each, a “Public Lender”). The Borrower hereby agrees that (i) at the Administrative Agent’s request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” will appear prominently on the first page thereof; (ii) by marking Borrower Materials “PUBLIC,” the Borrower will be deemed to have authorized the Administrative Agent, the Lenders and the Issuing Banks to treat such Borrower Materials as containing only Public-Side Information (provided, however, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked “PUBLIC” and, except to the extent the Borrower notifies the Administrative Agent to the contrary, any Borrower Materials provided pursuant to Sections 6.01(1), 6.01(2) or 6.02(1) are permitted to be made available through a portion of the Platform designated as “Public Side Information”; and (iv) the Administrative Agent and the Arrangers shall be entitled to treat Borrower Materials that are not specifically identified as “PUBLIC” as being suitable only for posting on a portion of the Platform not designated as “Public Side Information.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials “PUBLIC.”

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product; provided that in the event that the Borrower does not provide information that otherwise would be required to be provided hereunder in reliance on the exclusions in this paragraph relating to violation of any obligation of confidentiality, the Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent promptly upon obtaining knowledge that such information is being withheld (but solely if providing such notice would not violate such obligation of confidentiality).
SECTION 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

(1) the occurrence of any Default; and

(2) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any violation by any Loan Party or any of its Subsidiaries of, or liability under, any Environmental Law or Environmental Permit, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clause (1) or (2) to the extent (other than with respect to the preservation of the existence of the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or disposition permitted by Article VII.

SECTION 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Borrower or any of the Restricted Subsidiaries excepted.
SECTION 6.07 Maintenance of Insurance. Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Borrower’s and the Restricted Subsidiaries’ properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried; provided that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Subject to Section 6.13(2), each such policy of insurance will, as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

SECTION 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and comply with the USA PATRIOT Act, sanctions administered by OFAC and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected individually or in the aggregate 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 shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants’ customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower’s expense; provided further that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower’s independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.
SECTION 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower’s expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) the designation of any existing direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) as a Restricted Subsidiary, (iii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Material Domestic Subsidiary or (iv) an Excluded Subsidiary that is a wholly owned Material Domestic Subsidiary ceasing to be an Excluded Subsidiary but continuing as a wholly owned Material Domestic Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien) but excluding Excluded Assets):

(a) within the days specified below after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion, cause each such Material Domestic Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) within sixty (60) days (or within ninety (90) days in the case of documents listed in Section 6.11(2)(b)) after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent items listed in Section 6.11(2)(b), mutatis mutandis, with respect to any supplements to the Security Agreement, a counterpart signature page to the Intercompany Note, Intellectual Property Security Agreements and other security agreements and documents (if applicable), as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date as amended and in effect from time to time), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and, if applicable, a joinder to the Intercompany Note substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Material Domestic Subsidiary and required to be pledged pursuant to the Collateral Documents;
(C) within sixty (60) days (or within ninety (90) days in the case of documents listed in Section 6.11(2)(b)) after such formation, acquisition or designation, take and cause (i) the applicable Material Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement and (ii) to the extent applicable, each direct or indirect parent of such applicable Material Domestic Subsidiary, in each case, to take customary action(s) (including the filing of Uniform Commercial Code financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days (or ninety (90) days in the case of documents described in Section 6.11(2)(b)) after the reasonable request therefor by the Administrative Agent, deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request;

provided that actions relating to Liens on real property are governed by Section 6.11(2) and not this Section 6.11(1).

(2) Material Real Property.

(a) Notice.

(i) Within ninety (90) days after the formation, acquisition or designation of a Material Domestic Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement, the Borrower will, or will cause such Material Domestic Subsidiary to, furnish to the Collateral Agent a description of any Material Real Property (other than any Excluded Asset(s)) owned by such Material Domestic Subsidiary.

(ii) Within ninety (90) days after the acquisition of any Material Real Property (other than any Excluded Asset(s)) by a Loan Party (other than Holdings), after the Closing Date, the Borrower will, or will cause such Loan Party to, furnish to the Collateral Agent a description of any such Material Real Property.

(b) Mortgages. The Borrower will, or will cause the applicable Loan Party to, provide the Collateral Agent with a Mortgage with respect to any Material Real Property that is the subject of a notice delivered pursuant to Section 6.11(2)(a), within ninety (90) days of the acquisition, formation or designation of such Material Domestic Subsidiary or the acquisition of such Material Real Property (or such longer period as the Collateral Agent may agree in its sole discretion), together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may deem reasonably necessary or desirable in order to create, except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a valid and subsisting perfected Lien on such Material Real Property in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent;
(ii) fully paid American Land Title Association Lender’s title insurance policies (or marked up title commitments having the effect of policies of title insurance) or the equivalent or other form available in each applicable jurisdiction (the “Mortgage Policies”) in form and substance, with endorsements available in the applicable jurisdiction without surveys or survey coverage (it being agreed that zoning reports from a nationally recognized zoning company shall be acceptable in lieu of zoning endorsements to title policies in any jurisdiction where there is a material difference in the cost of zoning reports and zoning endorsements) and in amounts, reasonably acceptable to the Collateral Agent (not to exceed the fair market value of the real properties covered thereby), issued, coinsured and reinsured by title insurers reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Liens permitted by Section 7.01 or such other Liens reasonably satisfactory to the Collateral Agent that do not have a material adverse impact on the use or value of the Mortgaged Properties, and providing for such other affirmative insurance and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably request and is available in the applicable jurisdiction;

(iii) customary Opinions of Counsel for the applicable Loan Parties in states in which such Material Real Properties are located, with respect to the enforceability and perfection of the Mortgage(s) and any related fixture filings and the due authorization, execution and delivery of the Mortgages, in form and substance reasonably satisfactory to the Collateral Agent;

(iv) a completed “Life of Loan” Federal Emergency Management Agency standard flood hazard determination with respect to each Material Real Property containing improved land addressed to the Collateral Agent and otherwise in compliance with the Flood Insurance Laws; and

(v) as promptly as practicable after the reasonable request therefor by the Collateral Agent, environmental assessment reports and reliance letters (if any) that have been prepared in connection with such acquisition, designation or formation of any Material Domestic Subsidiary or acquisition of any Material Real Property;

provided that there shall be no obligation to deliver to the Collateral Agent any environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.

(3) Notwithstanding anything to the contrary in this Section 6.11, the Collateral Agent may grant one or more extensions of time from any time period set forth herein for the taking of or causing any action, delivering or furnishing any notice, information, documents, insurance or opinions or for the creation and perfection of any Liens in its reasonable discretion and any such extensions may, in the sole discretion of the Collateral Agent, be effective retroactively.

SECTION 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.
SECTION 6.13 Further Assurances and Post-Closing Covenant.

(1) Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to satisfy the Collateral and Guarantee Requirement.

(2) As promptly as practicable, and in any event no later than one hundred and twenty (120) days after the Closing Date or such later date as the Administrative Agent reasonably agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Closing Date, (a) deliver the documents or take the actions required pursuant to sub clauses (i) through (v) of Section 6.11(2)(b) hereof with respect to any Material Real Properties listed in Schedule 1.01(2) and (b) deliver the documents or take the actions specified in Schedule 6.13(2), in each case except to the extent otherwise agreed by the Collateral Agent pursuant to its authority as set forth in the definition of the term “Collateral and Guarantee Requirement.”

SECTION 6.14 Use of Proceeds. The proceeds of (a) the Closing Date Term Loans, together with the proceeds of the Second Lien Initial Term Loans, any Revolving Loans drawn on the Closing Date (to the extent permitted under this Agreement) and cash on hand, will be used (i) to fund the Transactions and (b) any Revolving Loans will be used for working capital and general corporate purposes and for any other purpose not prohibited by the Loan Documents; provided that the Closing Date Revolving Facility shall not be utilized to finance the Parent Distribution.

SECTION 6.15 Maintenance of Ratings. Use commercially reasonable efforts to maintain (1) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody’s, in each case in respect of the Borrower, and (2) a public rating (but not any specific rating) in respect of each Term Facility as of the Closing Date from each of S&P and Moody’s.

Article VII

Negative Covenants

So long as the Termination Conditions are not satisfied:

SECTION 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.
SECTION 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “incur” and collectively, an “incurrence”) with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;

provided that the Borrower may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, in each case, if (any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued pursuant to following clauses (A), (B) and (C), “Permitted Ratio Debt”):

(A) with respect to Indebtedness secured by the Collateral on a pari passu basis with the First Lien Obligations, the First Lien Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than 4.25 to 1.00;

(B) with respect to Indebtedness secured by the Collateral on a basis that is junior in priority to the First Lien Obligations, the Secured Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than 5.25 to 1.00; or

(C) with respect to Indebtedness that is not secured by the Collateral, including all Indebtedness of Restricted Subsidiaries that are not Guarantors, or any Disqualified Stock or Preferred Stock, the Total Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than 5.50 to 1.00,

in each case, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

provided further that (i) Restricted Subsidiaries of the Borrower that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock under this Section 7.02(a) if, after giving pro forma effect to such incurrence or issuance (including a pro forma application of the net proceeds therefrom), the aggregate principal amount of Indebtedness, liquidation preference of Disqualified Stock and amount of Preferred Stock of such Restricted Subsidiaries incurred or issued pursuant to this Section 7.02(a), together with any principal amounts incurred or issued by such Restricted Subsidiaries under Section 7.02(b)(14)(a) and Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), in each case then outstanding, would exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (i) $500.0
and (ii) 65.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis), (II) Permitted Ratio Debt in the form of Indebtedness (x) shall not mature earlier than the Original Term Loan Maturity Date and (y) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Permitted Ratio Debt, (III) if the terms of any such Permitted Ratio Debt in the form of revolving loans or commitments contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Revolving Facility, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of the Revolving Facility and (IV) if any such Indebtedness in clause (A) of the definition of Permitted Ratio Debt consists of syndicated Dollar-denominated or Euro-denominated term loans secured by a Lien on the Collateral ranking pari passu with the First Lien Obligations under this Agreement, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(c) (to the extent then applicable) as if such Indebtedness were Incremental Term Loans incurred pursuant to Section 2.14.

(b) The provisions of Section 7.02(a) will not apply to:

1. Indebtedness under the Loan Documents (including Incremental Loans, Other Loans, Extended Term Loans, Loans made pursuant to Extended Revolving Commitments and Replacement Loans);

2. the incurrence by the Borrower and any Guarantor of Indebtedness pursuant to the Second Lien Credit Documents or consisting of “Permitted Incremental Equivalent Debt” (or equivalent term) (as defined in the Second Lien Credit Agreement) or any Refinancing Indebtedness in respect thereof (including any “Credit Agreement Refinancing Indebtedness” (or equivalent term) (as defined in the Second Lien Credit Agreement)) in an aggregate outstanding principal amount not to exceed $600.0 million (plus (x)(i) the amount of any “Incremental Loans” and “Permitted Incremental Equivalent Debt” (or equivalent terms) (each, as defined in the Second Lien Credit Agreement (as in effect on the date hereof)) permitted under Sections 2.14(4)(c) and 7.02 (or equivalent provisions) of the Second Lien Credit Agreement (as in effect on the date hereof) and (y) the amount of accrued interest, fees and premiums (including tender premium) and penalties (if any) with respect to any such Indebtedness under this clause (b)(2) refinanced, and fees, expenses, original issue discount and upfront fees incurred in connection with any such refinancing);

3. the incurrence of Indebtedness by the Borrower and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in the preceding clauses (1) and (2)); provided that any such item of Indebtedness with an aggregate outstanding principal amount on the Closing Date in excess of $15.0 million shall be set forth on Schedule 7.02;

4. the incurrence of Attributable Indebtedness and Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations) and Disqualified Stock incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock or Preferred Stock incurred or issued and outstanding under this clause (4) at such time, not to exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) $230.0 million and (II) 30.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis);
5) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker’s acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers’ compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

6) the incurrence of Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts, other contingent consideration obligations and other deferred purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

7) the incurrence of Indebtedness by the Borrower and owing to a Restricted Subsidiary or the issuance of Disqualified Stock of the Borrower to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); provided that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans to the extent permitted by applicable law; provided further that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent such Disqualified Stock is then outstanding) not permitted by this clause (7);

8) the incurrence of Indebtedness of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent permitted by Section 7.05; provided that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor to the extent permitted by applicable law; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);
(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Borrower or a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary); provided that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(11) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance, banker’s acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(12) the incurrence of:

(a) Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 200.0% of the net cash proceeds received by the Borrower since the Closing Date from the issue or sale of Equity Interests of the Borrower or contributions to the capital of the Borrower, including through consolidation, amalgamation or merger (in each case, other than proceeds of Disqualified Stock or any exercise of the cure right set forth in Section 8.04 and other than proceeds received from the Borrower or a Restricted Subsidiary) as determined in accordance with clauses (3)(b) and (3)(c) of Section 7.05(a) to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.05(a) or to make Permitted Investments (other than Permitted Investments specified in clause (1), (2) or (3) of the definition thereof); and

(b) Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (12)(b), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (I) $200.0 million and (II) 25.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis) plus, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any
accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased plus (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock, minus (iii) any General Debt Basket Reallocated Amount;

(13) the incurrence or issuance by the Borrower of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness (including any Designated Revolving Commitments) permitted under Section 7.02(a) and clauses (b)(3) and (12)(a) above, this clause (13) and clauses (14) and (30), or any successive Refinancing Indebtedness with respect to any of the foregoing;

(14) (a) the incurrence or issuance of:

(x) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary, incurred or issued to finance an acquisition or investment (or other purchase of assets), or

(y) Indebtedness, Disqualified Stock or Preferred Stock (I) of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement or (II) that is assumed by the Borrower or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets), in an aggregate principal amount or liquidation preference, together with any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), not to exceed (i) the greater of $270.0 million and 35.0% of Consolidated EBITDA plus (ii) an unlimited amount so long as in the case of this clause (ii) only, either:

(A) with respect to Indebtedness secured by the Collateral on a pari passu basis with the First Lien Obligations, the First Lien Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the greater of (I) 4.25 to 1.00 and (II) the First Lien Net Leverage Ratio immediately prior to giving effect to such incurrence of such Indebtedness;

(B) with respect to Indebtedness secured by the Collateral on a basis that is junior in priority to the First Lien Obligations, the Secured Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the greater of (I) 5.25 to 1.00 and (II) the Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of such Indebtedness; or
(C) with respect to Indebtedness that is not secured by the Collateral, including all Indebtedness of Restricted Subsidiaries that are not Guarantors, or any Disqualified Stock or Preferred Stock, the Total Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the greater of (I) 5.50 to 1.00 and (II) the Total Net Leverage Ratio immediately prior to giving effect to such incurrence of such Indebtedness or the issuance of such Disqualified Stock or Preferred Stock;

provided that (x) with respect to such Indebtedness, Restricted Subsidiaries of the Borrower that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock under clause (14)(a) if, after giving pro forma effect to such incurrence or issuance (including a pro forma application of the net proceeds therefrom), the aggregate principal amount of Indebtedness, liquidation preference of Disqualified Stock and amount of Preferred Stock of such Restricted Subsidiaries incurred or issued pursuant to clause (14)(a), together with any principal amounts incurred, assumed or issued by such Restricted Subsidiaries under Section 7.02(a) and any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), in each case then outstanding, would exceed (as of the date of such indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (i) $500.0 million and (ii) 65.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis), (y) such Indebtedness (I) shall not mature earlier than the Original Term Loan Maturity Date and (II) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Indebtedness and (z) if any such Indebtedness under clause (i) or clause (ii)(A) consists of syndicated Dollar-denominated or Euro-denominated term loans secured by a Lien on the Collateral ranking pari passu with the First Lien Obligations under this Agreement, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(c) (to the extent then applicable) as if such Indebtedness were Incremental Term Loans incurred pursuant to Section 2.14;

(b) so long as not created in contemplation of such acquisition or investment, (i) Indebtedness or Disqualified Stock that is assumed by the Borrower or any Restricted Subsidiary in connection with an acquisition or investment (or other purchase of assets) and (ii) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement, in each case in an aggregate principal amount or liquidation preference, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), not to exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is assigned or acquired) (A) the greater of $115.0 million and 15.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis) plus (B) an unlimited amount of Indebtedness, Disqualified Stock or Preferred Stock so long as, after giving pro forma effect to the assumption or acquisition of such Indebtedness, Disqualified Stock or Preferred stock and such acquisition or investment (or other purchase of assets), the Borrower is in compliance with the Financial Covenant (whether or not then in effect) calculated on a pro forma basis as of the last day of the most recently ended Test Period;

(15) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;
(16) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by letters of credit or bank guarantees issued in connection herewith, any Credit Agreement Refinancing Indebtedness or Permitted Incremental Equivalent Debt, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;

(17) (a) the incurrence of any guarantee by the Borrower or a Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is permitted by this Agreement, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary is permitted by this Agreement;

(18) the incurrence of Indebtedness issued by the Borrower or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);

(19) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Restricted Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(21) Indebtedness incurred by a Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm’s-length commercial terms;

(22) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Guarantors in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (23), together with any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (I) $270.0 million and (II) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis);
(24) the incurrence of Indebtedness by the Borrower or any Restricted Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) Qualified Securitization Facilities and, to the extent constituting Indebtedness, Receivables Financing Transactions;

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;

(27) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;

(28) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(29) the incurrence of Indebtedness arising out of any Sale-Leaseback Transaction incurred in the ordinary course of business or consistent with industry practice;

(30) (a) Credit Agreement Refinancing Indebtedness and (b) Permitted Incremental Equivalent Debt;

(31) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Guarantors to fund working capital requirements in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (31), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) $40.0 million and (II) 5.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis); and

(32) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (31) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;
(2) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accrual or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to clauses (2), (3), (4), (12), (13), (14), (23), (30) and (31) of Section 7.02(b) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness).

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar equivalent principal amount of Indebtedness or liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower Dollar equivalent)); provided that if such Indebtedness, Disqualified Stock or Preferred Stock is issued to Refinance other Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased plus (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, plus (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness).
The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness or Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

SECTION 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve 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 (other than as part of the Transactions), except that:

(1) Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); provided that

(a) the Borrower shall be the continuing or surviving Person,

(b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and

(c) in the case of a merger or consolidation of Holdings with and into the Borrower,

(i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,

(ii) Holdings shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower,

(iii) no Event of Default exists at such time or after giving effect to such transaction and

(iv) after giving effect to such transaction, a direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (B) pledge 100% of the Equity Interests of the Borrower held by such direct parent to the Administrative Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Administrative Agent and the Borrower;

(2) (a) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party,
(b) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; provided that a Loan Party shall be the continuing or surviving Person;

(c) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted; and

(d) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders; provided that in the case of clause (d), the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of “Permitted Investments”;

(3) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary;

(4) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; provided that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower’s assets, is the transferee of such assets) (any such Person, a “Successor Borrower”):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and

(C) deliver to the Administrative Agent (I) an Officer’s Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower’s obligations under this Agreement),
(B) each Loan Party, unless it is the other party to such merger or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder,

(C) if reasonably requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, will, by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent and the Borrower), confirm that its obligations thereunder shall apply to the Successor Borrower’s obligations under this Agreement;

(iii) after giving pro forma effect to such incurrence, the Borrower would be permitted to incur at least $1.00 of additional Permitted Ratio Debt; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Borrower required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and in the case of the disposition of all or substantially all assets, the original Borrower will be released;

(i) the Person formed by or surviving any such merger or consolidation is not Holdings,

(ii) Holdings is not the Person into which the applicable Person has been liquidated or

(iii) in connection with a disposition of all or substantially all of Holdings’s assets, the Person that is the transferee of such assets is not Holdings (any such Person described in the preceding clauses (i) through (iii), a “Successor Holdings”), then the Successor Holdings will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower,

(C) pledge 100% of the Equity Interests of the Borrower held by such Successor Holding Entity to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower,
(D) if requested by the Administrative Agent, deliver, or cause the Borrower to deliver, to the Administrative Agent (I) an Officer’s Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Collateral Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Holdings required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement and in the case of the disposition of all or substantially all assets, the original Holdings will be released;

(6) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05;

(7) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 or a disposition that does not constitute any Asset Sale (other than a transaction described in clause (b) of the definition of Asset Sale);

(8) the Borrower, Holdings and any Restricted Subsidiary may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name; and

(9) the Loan Parties and the Restricted Subsidiaries may consummate the Transactions.

SECTION 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale unless:

(1) the Borrower or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, with respect to any Asset Sale pursuant to this Section 7.04 for a purchase price in excess of $50.0 million, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):
(a) any liabilities (as shown on the Borrower’s or any Restricted Subsidiary’s most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower’s or a Restricted Subsidiary’s balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Restricted Subsidiary);

(b) any securities, notes or other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (i) $155.0 million and (ii) 20.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower’s option, at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value;

(d) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Borrower or a Restricted Subsidiary), to the extent that the Borrower and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale; or

(e) any Investment, Capital Stock, assets, property or capital or other expenditure of the kind referred to in Section 2.05(2)(b)(ii).

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.
SECTION 7.05 Restricted Payments.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower’s or any Restricted Subsidiary’s Equity Interests (in each case, solely in such Person’s capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(i) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(ii) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Junior Indebtedness with an aggregate outstanding principal amount in excess of the Threshold Amount, other than:

(i) Indebtedness permitted under clauses (7), (8) and (9) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Junior Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as “Restricted Payments”), unless, at the time of and immediately after giving effect to such Restricted Payment:

(1) in the case of a Restricted Payment described in clauses (A) and (B) above utilizing clause 3(a) or (g) below, no Event of Default under Section 8.01(1) or Section 8.01(6) will have occurred and be continuing or would occur as a consequence thereof;

(2) [reserved];
such Restricted Payment, together with the aggregate amount of all other Restricted Payments (including the fair market value of any non-cash amount) made by the Borrower and its Restricted Subsidiaries after the Closing Date (excluding Restricted Payments permitted by 7.05(b) other than clause (1) thereof), is less than the sum of (without duplication):

(a) 50.0% of the Consolidated Net Income of the Borrower and the Restricted Subsidiaries for the period (taken as one accounting period) commencing on April 3, 2017 to the end of the most recently ended fiscal quarter for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) preceding such Restricted Payment or, in the case such Consolidated Net Income for such period is a deficit, minus 100.0% of such deficit; plus

(b) 100.0% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by the Borrower and its Restricted Subsidiaries since the Closing Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 7.02(b)(12)(a)) from the issue or sale of:

(i) (A) Equity Interests of the Borrower, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

(I) Equity Interests to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates, Immediate Family Members or any permitted transferees thereof) of the Borrower, its Subsidiaries or any Parent Company after the Closing Date to the extent such amounts have been applied to Restricted Payments made in accordance with Section 7.05(b)(4); and

(II) Designated Preferred Stock; and

(B) Equity Interests of Parent Companies, to the extent the proceeds of any such issuance or consideration for any such sale are contributed to the Borrower (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with Section 7.05(b)(4)); or

(ii) Indebtedness of the Borrower or any Restricted Subsidiary, that has been converted into or exchanged for Equity Interests of the Borrower or any Parent Company;

provided that this clause (b) will not include the proceeds from (v) any exercise of the cure right set forth in Section 8.04, (w) Refunding Capital Stock (as defined below) applied in accordance with Section 7.05(b)(2) below, (x) Equity Interests or convertible debt securities of the Borrower sold to a Restricted Subsidiary, (y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (z) Excluded Contributions; plus

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(c) 100.0% of the aggregate amount of cash, Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Borrower following the Closing Date (including the fair market value of any Indebtedness contributed to the Borrower or its Subsidiaries for cancellation) or that becomes part of the capital of the Borrower through consolidation, amalgamation or merger following the Closing Date, in each case not involving cash consideration payable by the Borrower (other than (w) net cash proceeds of any exercise of the cure right set forth in Section 8.04, (x) net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 7.02(b)(12)(a), (y) cash, Cash Equivalents and marketable securities or other property that are contributed by a Restricted Subsidiary or (z) Excluded Contributions); plus

(d) 100.0% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by the Borrower or a Restricted Subsidiary by means of:

   (i) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary) of, or other returns on investments from, Restricted Investments made by the Borrower or its Restricted Subsidiaries (including cash distributions and cash interest received in respect of Restricted Investments) and repurchases and redemptions of such Restricted Investments from the Borrower or its Restricted Subsidiaries (other than by the Borrower or a Restricted Subsidiary) and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Borrower or its Restricted Subsidiaries, in each case after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof);

   (ii) the sale (other than to the Borrower or a Restricted Subsidiary) of Equity Interests of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but including such cash or fair market value to the extent exceeding the amount of such Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof); or

   (iii) any returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a Dollar-denominated or ratio based Basket (to the extent in excess of the original amount of the Investment); plus

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Borrower or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Borrower or a Restricted Subsidiary after the Closing Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of cash or fair market value; plus

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(f) 100% of the aggregate amount of any Excluded Proceeds (except to the extent utilized to repurchase, redeem, defease, acquire, or retire for value any Junior Indebtedness pursuant to clause (b)(13) below); plus

(g) $100.0 million.

(b) The provisions of Section 7.05(a) will not prohibit:

1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Section 7.05;

(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("Treasury Capital Stock") or (ii) Junior Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Borrower or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) ("Refunding Capital Stock") and (y) within 120 days of such sale or issuance,

(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Restricted Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance, and

(c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Borrower was permitted under clause (6)(a) or (b) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount per annum no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Junior Indebtedness of the Borrower or a Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Junior Indebtedness of the Borrower or a Guarantor or Disqualified Stock of the Borrower or a Guarantor within 120 days of such sale, issuance or incurrence,

(b) Disqualified Stock of the Borrower or a Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock or Junior Indebtedness of the Borrower or a Guarantor, made within 120 days of such sale, issuance or incurrence,
(c) Disqualified Stock of a Restricted Subsidiary that is not a Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Guarantor, made within 120 days of such sale or issuance, that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 7.02, and

(d) any Junior Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the Borrower, any of its Subsidiaries or any Parent Company in connection with the Transactions; provided that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $25.0 million in any calendar year (increasing to $50.0 million following an underwritten public Equity Offering by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; provided further that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of Section 7.05(a); plus

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that are foregone in exchange for the receipt of Equity Interests of the Borrower or any Parent Company pursuant to any compensation arrangement, including any deferred compensation plan; plus

(c) the cash proceeds of life insurance policies received by the Borrower or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Borrower (other than in the form of Disqualified Stock)) after the Closing Date; minus

(d) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);
provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; provided further that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;

(5) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Borrower or any Restricted Subsidiary or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 7.02; provided, that after giving pro forma effect to such dividend or distribution, including the amount thereof in Consolidated Interest Expense solely for the purposes of this clause (5), the Borrower would have had a Interest Coverage Ratio of at least 2.00 to 1.00;

(6) (a) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower or any Restricted Subsidiary after the Closing Date;

(b) the declaration and payment of dividends or distributions to any Parent Company, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by such Parent Company after the Closing Date; provided that the amount of dividends and distributions paid pursuant to this clause (b) will not exceed the aggregate amount of cash actually contributed to the Borrower from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this Section 7.05(b);

provided that in the case of each of clauses (a), (b) and (c) of this clause (6), for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a pro forma basis, the Borrower would have had a Interest Coverage Ratio of at least 2.00 to 1.00;

(7) (a) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Restricted Subsidiary or any Parent Company,

(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and
(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any Parent Company in connection with such Person’s purchase of Equity Interests of the Borrower or any Parent Company; provided that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Borrower’s common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company’s common equity), following the first public offering of the Borrower’s common equity or the common equity of any Parent Company after the Closing Date, in an aggregate amount per annum not to exceed 6.0% of Market Capitalization;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) $100.0 million; provided that if this clause (10) is utilized to make a Restricted Investment, the amount deemed to be utilized under this clause (10) will be the amount of such Restricted Investment at any time outstanding (with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of “Investment”);

(11) distributions or payments of Securitization Fees;

(12) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto;

(13) the repurchase, redemption, defeasance, acquisition or retirement for value of any Junior Indebtedness from Excluded Proceeds (except to the extent utilized to make Restricted Payments pursuant to clause (f) of Section 7.05(a));

(14) the declaration and payment of dividends or distributions by the Borrower or any Restricted Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes and other fees and expenses, required to maintain their corporate or other legal existence;

(b) for any taxable period (or portion thereof) for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a “Tax Group”), to pay the portion of any U.S. federal, foreign, state or local income Taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); provided that for each taxable period, (A) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (B) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by an Unrestricted Subsidiary to the Borrower or any Restricted Subsidiary for such purpose;
(c) for any taxable period (or portion thereof) for which the Borrower and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes (amounts permitted to be distributed, loaned or advanced pursuant to this clause (c), "Tax Distributions"): cash distributions from the Borrower at such times and in such amounts necessary to permit each Parent Company to make cash distributions to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the sum of (I) any non-income Taxes payable by such member with respect to the Borrower and (II) the product of (A) the taxable income of the Borrower allocable to such member for such period (assuming the Borrower for this purpose is a regarded entity for U.S. federal income tax purposes), determined by taking into account any basis step-up in the assets of the Borrower or any of its Subsidiaries resulting from the Transactions (other than any basis adjustment arising under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Borrower or Parent Company for such taxable period (taking into account the Medicare Contribution Tax on net investment income tax, the character of the taxable income in question (e.g. long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon, including the limitations in Sections 67 and 68 of the Code) and adjusted to the extent necessary to calculate federal, state and local tax liability separately so as to take into account the calculation under the applicable state and local tax laws of taxable income and taxable losses and the extent to which such losses may offset such income) increased if necessary to apply alternative minimum tax rates and rules in years in which the alternative minimum tax applies (or would apply based on the assumptions stated herein) to the relevant distributee if the distributee were an individual or a corporation, assuming each distributee's sole asset is its direct or indirect interest in the Borrower); provided that the amount of any Tax Distribution permitted under this clause (c) shall be reduced by the amount of any income taxes that are paid directly by the Borrower and attributable to such member and would otherwise have been taken into account in the calculation of such Tax Distribution; provided further that (1) Tax Distributions in respect of a taxable year may be made based on estimates of taxable income, with adjustments being made to subsequent Tax Distributions to reflect differences between such estimates and final calculations of taxable income, (2) Tax Distributions may be increased by an amount sufficient to enable any Parent Company to pay any Taxes arising from the Partnership Audit Rules and attributable to the operations and activities of Borrower and its Subsidiaries (calculated by assuming that such Parent Company does not make the election described in Section 6226 of the Code (or any analogous state, local or non-U.S. law) and is unable to reduce the amount of any Tax pursuant to the provisions of Section 6225 of the Code (or any analogous state, local or non-U.S. law)), and (3) if, following an audit or examination, there is an adjustment that would affect the calculation of taxable income or taxable loss for a given period or portion thereof, or in the event that a Parent Company files an amended tax return which has such effect, then, additional Tax Distributions may be made (increased by an additional amount estimated to be sufficient to cover any interest or penalties) to give effect to such adjustment or amended tax return; and
(d) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company, and any payroll, social security or similar taxes thereof;

(e) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company;

(f) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(g) amounts that would be permitted to be paid directly by the Borrower or its Restricted Subsidiaries under Section 7.07(b) (other than clause 2(a) thereof);

(h) interest or principal on Indebtedness the proceeds of which have been contributed to the Borrower or any Restricted Subsidiary or that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with Section 7.02;

(i) amounts payable pursuant to the Transaction Documents;
(15) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company;

(17) (a) Restricted Payments described in clauses (A) and (B) of the definition thereof contained in Section 7.05(a); provided that after giving pro forma effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 4.25 to 1.00 and (b) Restricted Payments described in clauses (C) and (D) of the definition thereof contained in Section 7.05(a); provided that after giving pro forma effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 4.25 to 1.00;

(18) payments made for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.07;

(19) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;

(20) the payment of dividends, other distributions and other amounts by the Borrower to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest or principal (including AHYDO Payments) on Indebtedness, the proceeds of which have been permanently contributed to the Borrower or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with this Agreement; provided that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Borrower for the incurrence of such Indebtedness;

(21) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate amount since the date of this Agreement not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Borrower or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;
any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Borrower’s common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and

the refinancing of any Junior Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness.

provided that at the time of, and after giving effect to, any Restricted Payment pursuant to clause (17) in respect of Restricted Payments described in clauses (A) or (B) of the definition thereof, no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower’s election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement.

SECTION 7.06 Change in Nature of Business. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.

SECTION 7.07 Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an “Affiliate Transaction”) involving aggregate payments or consideration in excess of $75.0 million, unless such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm’s-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view.

(b) The foregoing restriction will not apply to the following:

(1) (a) transactions between or among the Borrower and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; provided that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement;
(2) (a) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term “Restricted Payments,” including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition, but excluding any Restricted Payment permitted by Section 7.05(14)(g)), (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder and (c) Indebtedness permitted by Section 7.02;

(3) (a) the payment of management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreement (including any unpaid management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreement, or any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management Services Agreement as in effect on the Closing Date,

(b) the payment of indemnification and similar amounts to, and reimbursement of expenses to, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors,

(c) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice,

(d) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company and

(e) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company;

(4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary;

(5) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm’s-length basis;
(6) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement
as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not
materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the
applicable agreement as in effect on the Closing Date);

(7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity
holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as
of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter, provided that the
existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing
agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will only be permitted by this
clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in
the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement
in effect on the Closing Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or
transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with
industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in
the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might
reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person
and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of
the Borrower;

(11) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified
Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto;

(12) payments by the Borrower or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or
placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments
are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;
(13) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and cancellation of any thereof) of the Borrower, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith; and any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) that are, in each case, approved by the Borrower in good faith;

(14) (a) investments by Affiliates in securities or Indebtedness of the Borrower or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Borrower or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(15) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(16) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Borrower (and any Parent Company) and its Subsidiaries; provided that in each case the amount of such payments by the Borrower and its Subsidiaries are permitted under Section 7.05(b)(14);

(17) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(18) intellectual property licenses in the ordinary course of business or consistent with industry practice;

(19) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;

(20) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Borrower or any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;
(21) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer’s Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer’s Certificate;

(22) (a) transactions with a Person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Restricted Subsidiary or any Parent Company;

(23) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(24) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;

(25) investments by any Investor or Parent Company in securities or Indebtedness of the Borrower or any Guarantor;

(26) payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness), (b) the Second Lien Term Loans or (c) other Indebtedness, Disqualified Stock or Preferred Stock of the Borrower and its Subsidiaries held by Affiliates; provided that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith;

(27) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(28) any transactions and payments contemplated by, and the performance by the Parent Borrower or any Restricted Subsidiary of any other obligations under, each of the Transaction Documents (and any amendment thereto and similar agreements or arrangements that it may enter into thereafter), including any Restricted Payment made in connection with such transactions or used to fund amounts owed to Affiliates (including Restricted Payments to any Parent Company to permit payment by such Parent Company of such amounts); provided that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any such amendment to such Transaction Document or under such similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (28) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Borrower to the Lenders when taken as a whole (as compared to such Transaction Document in effect on the Closing Date).

SECTION 7.08 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to:

(1) (a) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or
(b) pay any Indebtedness owed to the Borrower or to any Restricted Subsidiary that is a Guarantor;

(2) make loans or advances to the Borrower or to any Restricted Subsidiary that is a Guarantor;

(3) sell, lease or transfer any of its properties or assets to the Borrower or to any Restricted Subsidiary that is a Guarantor; or

(4) with respect to (a) any Subsidiary Guarantor (and, solely to the extent this clause (4)(a) relates to Hedging Obligations of Restricted Subsidiaries, the Borrower), Guaranty the Obligations or (b) with respect to the Borrower or any Subsidiary Guarantor, create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents;

provided that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.08(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(1) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation;

(2) the Second Lien Credit Documents;

(3) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clauses (3) and 4(b) above on the property so acquired;

(4) applicable Law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;
(6) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(7) [reserved];

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;

(9) provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 7.02;

(10) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;

(11) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;

(12) restrictions created in connection with any Qualified Securitization Facility or Receivables Financing Transaction that, in the good faith determination of the Board of Directors of the Borrower, are necessary or advisable to effect such Qualified Securitization Facility or Receivables Financing Transaction;

(13) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; provided that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(14) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary;

(15) customary provisions restricting assignment of any agreement;

(16) restrictions arising in connection with cash or other deposits permitted under Section 7.01;

(17) any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Borrower or any
Restricted Subsidiary than (A) the restrictions contained in the Loan Documents and the Second Lien Credit Documents as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to the Borrower or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower’s ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;

(18) (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4) and any permitted refinancing in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice;

(19) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.08;

(20) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; provided that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Borrower or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(21) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (20) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(22) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; provided that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and

(23) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 7.02 is incurred.

SECTION 7.09 Accounting Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any change in fiscal year; provided, however, that the Borrower may, upon written notice to the Administrative Agent, (i) change its fiscal year to a calendar year ending December 31 and (ii) change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, and in the case of each of (i) and (ii), the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.
SECTION 7.10 Modification of Terms of Subordinated Indebtedness. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Junior Indebtedness that is contractually subordinated in right of payment and having an aggregate outstanding principal amount greater than the Threshold Amount (other than as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed); provided, however, that no amendment, modification or change of any term or condition of any Junior Indebtedness permitted by any subordination provisions set forth in the applicable Junior Indebtedness or any other stand-alone subordination agreement in respect thereof shall be deemed to be materially adverse to the interests of the Lenders.

SECTION 7.11 Holdings. Holdings shall not engage in any material operating or business activities; provided that the following and any activities incidental thereto shall be permitted in any event:

(i) its ownership of the Equity Interests of the Borrower and its other Subsidiaries, including receipt and payment of Restricted Payments and other amounts in respect of Equity Interests,

(ii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes relating to such maintenance),

(iii) the performance of its obligations with respect to the Transactions, the Transaction Documents, the Loan Documents, the Second Lien Credit Documents and any other documents governing Indebtedness permitted hereby,

(iv) any public offering of its common equity or any other issuance, registration or sale of its Equity Interests,

(v) financing activities, including the issuance of securities, incurrence of debt, receipt and payment of dividends and distributions, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Borrower and its other Subsidiaries,

(vi) if applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries,

(vii) holding any cash or property (but not operate any property),

(viii) providing indemnification to officers and directors,

(ix) merging, amalgamating or consolidating with or into any Person (in compliance with Section 7.03), (x) repurchases of Indebtedness through open market purchases and Dutch auctions,
(x) activities incidental to Permitted Acquisitions or similar Investments consummated by the Borrower and the Restricted Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or Investments incidental to such Permitted Acquisitions or similar Investments,

(xi) any transaction with the Borrower and/or any Restricted Subsidiary to the extent expressly permitted under this Section 7, and

(xii) any activities incidental or reasonably related to the foregoing.

SECTION 7.12 Financial Covenant. The Borrower and each of the Restricted Subsidiaries covenant and agree that:

(1) If on the last day of any Test Period (commencing with the fiscal quarter ending on or about December 30, 2017) there are outstanding Revolving Loans and Letters of Credit (excluding (a) undrawn Letters of Credit in an aggregate amount not to exceed $30.0 million and (b) Letters of Credit to the extent Cash Collateralized or backstopped (whether drawn or undrawn) on terms reasonably acceptable to the applicable Issuing Bank) in an aggregate principal amount exceeding 35% of the aggregate principal amount of all Revolving Commitments under all outstanding Revolving Facilities (including any Incremental Revolving Facilities), the Borrower shall not permit the First Lien Net Leverage Ratio as of the last day of such Test Period to be greater than 6.30 to 1.00 (such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent pursuant to Section 6.01(1) and Section 6.01(2) for such Test Period) (the “Financial Covenant”).

(2) The provisions of this Section 7.12 are for the benefit of the Revolving Lenders only and the Required Facility Lenders in respect of the Revolving Facility may amend, waive or otherwise modify this Section 7.12 or the defined terms used in this Section 7.12 (solely in respect of the use of such defined terms in this Section 7.12) or waive any Default or Event of Default resulting from a breach of this Section 7.12 without the consent of any Lenders other than the Required Facility Lenders in respect of the Revolving Facility.

Article VIII
Events of Default and Remedies

SECTION 8.01 Events of Default. Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an “Event of Default”:

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any Subsidiary Guarantor or, in the case of Section 7.11, Holdings, fails to perform or observe any term, covenant or agreement contained in Section 6.03(1), 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; provided that the Borrower’s failure to comply with the Financial Covenant or a breach of a financial maintenance covenant under any Incremental Revolving Commitments or any revolving facility that constitutes Credit Agreement Refinancing Indebtedness (each, a “Financial Covenant Event of Default”) shall not constitute an Event of
Default with respect to any Term Loans or Term Commitments unless and until the Required Facility Lenders for the Revolving Facilities have actually terminated the Revolving Commitments and declared all Obligations with respect to the applicable Revolving Facility to be immediately due and payable pursuant to Section 8.02 as a result of such failure to comply (and such declaration has not been rescinded as of the applicable date) (the occurrence of such termination and declaration by the Required Facility Lenders for the Revolving Facilities, a “Financial Covenant Cross Default”); provided further that any Financial Covenant Event of Default is subject to cure pursuant to Section 8.04; or

(3) **Other Defaults.** The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

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

(5) **Cross-Default.** The Borrower or any Restricted Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default hereunder by the Borrower or any Restricted Subsidiary), 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 all of such Indebtedness to be made, prior to its stated maturity; provided that (A) such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02 and (B) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(6) **Insolvency Proceedings, etc.** The Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or
(7) **Judgments.** There is entered against the Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not paid or covered by insurance or indemnities as to which the insurer or indemnity has been notified of such judgment or order and the applicable insurance company or indemnity has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(8) **ERISA.** (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates 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, or (c) with respect to a Foreign Plan, a termination, withdrawal or noncompliance with applicable Law or plan terms occurs, except, with respect to each of the foregoing clauses of this Section 8.01(8), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) **Invalidity of Loan Documents.** Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason (other than (a) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions) ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than (i) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04) or (ii) as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions; or

(10) **Collateral Documents.** Any Collateral Document with respect to a material portion of the Collateral after delivery thereof pursuant to Section 4.01, 6.11, 6.13 or pursuant to the provisions of any Collateral Document for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, or any Lien purported to be created by any Collateral Document with respect to a material portion of the Collateral shall be asserted in writing by any Loan Party (prior to the satisfaction of the Termination Conditions) not to be, a valid and perfected Lien with the priority required by such Collateral Document (or other security purported to be created on the applicable Collateral) on, and security interest in, any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents, to file Uniform Commercial Code amendments relating to a Loan Party’s change of name or jurisdiction of formation (solely to the extent that the Borrower provides the Collateral Agent written notice thereof in accordance with the Security Agreement, and the Collateral Agent and the Borrower have agreed that the Collateral Agent will be responsible for filing such amendments) or continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender’s title insurance policy and such insurer has not denied coverage; or
(11) **Change of Control.** There occurs any Change of Control.

SECTION 8.02 **Remedies upon Event of Default.** Subject to Section 8.04, if any Event of Default occurs and is continuing, the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

1. declare the Commitments of each Lender and any obligation of the Issuing Banks to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation will be terminated;
2. declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
3. require that the Borrower Cash Collateralize the then outstanding Letters of Credit (in an amount equal to the then Outstanding Amount thereof); and
4. 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 (a) upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto (the “Bankruptcy Code”), the Commitments of each Lender and any obligation of the Issuing Banks to issue Letters of Credit, will automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the Letters of Credit as aforesaid will automatically become effective, in each case without further act of the Administrative Agent or any Lender and (b) notwithstanding anything to the contrary, if the only Events of Default then having occurred and continuing are pursuant to a Financial Covenant Event of Default, then, unless a Financial Covenant Cross Default has occurred and is continuing, the Administrative Agent shall only take the actions set forth in this Section 8.02 at the request (or with the consent) of the Required Facility Lenders under the Revolving Facilities (as opposed to the Required Lenders) and only with respect to the Revolving Commitments, Revolving Loans, Letters of Credit and Obligations under the Revolving Facilities.

SECTION 8.03 **Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in clause (a) of the proviso to Section 8.02), subject to any Intercreditor Agreement then in effect, any amounts received on account of the Obligations will 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 amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;
Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit), the Obligations under Secured Hedge Agreements and Cash Management Obligations under Secured Cash Management Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

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 paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(3), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above will be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount will be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, will be paid to the Borrower.

Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party.

SECTION 8.04 Right to Cure.

(1) Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02, but subject to Sections 8.04(2) and (3), for the purpose of determining whether an Event of Default under the Financial Covenant has occurred, the Borrower may on one or more occasions designate any portion of the Net Proceeds from any Permitted Equity Issuance or of any contribution to the common equity capital of the Borrower (or from any other contribution to capital or sale or issuance of any other Equity Interests on terms reasonably satisfactory to the Administrative Agent) (the “Cure Amount”) as an increase to Consolidated EBITDA of the Borrower for the applicable fiscal quarter; provided that

(a) such amounts to be designated are actually received by the Borrower (i) on or after the first Business Day of the applicable fiscal quarter and (ii) on or prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the “Cure Expiration Date”),
(b) such amounts do not exceed the maximum aggregate amount necessary to cure any Event of Default under the Financial Covenant as of such date and

(c) the Borrower will have provided notice to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such Net Proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under the Financial Covenant is less than the full amount of such originally designated amount).

The Cure Amount used to calculate Consolidated EBITDA for one fiscal quarter will be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter. The parties hereby acknowledge that this Section 8.04(1) may not be relied on for purposes of calculating any financial ratios other than as applicable to the Financial Covenant (and may not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) and may not result in any adjustment to any amounts (including the amount of Indebtedness) or increase in cash with respect to the fiscal quarter with respect to which such Cure Amount was received other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence, except to the extent such proceeds are actually applied to prepay Indebtedness under the Facilities. Notwithstanding anything to the contrary contained in Section 8.01 and Section 8.02, (A) upon designation of the Cure Amount by the Borrower in an amount necessary to cure any Event of Default under the Financial Covenant, the Financial Covenant will be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the Financial Covenant and any Event of Default under the Financial Covenant (and any other Default as a result thereof) will be deemed not to have occurred for purposes of the Loan Documents, (B) from and after the date that the Borrower delivers a written notice to the Administrative Agent that it intends to exercise its cure right under this Section 8.04 (a "Notice of Intent to Cure") neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the Financial Covenant (and any other Default as a result thereof) until and unless the Cure Expiration Date has occurred without the Cure Amount having been designated and (C) no Lender or Issuing Bank shall be required to (but in its sole discretion may) make any Revolving Loan or issue or amend any Letter of Credit from and after such time as the Administrative Agent has received the Notice of Intent to Cure unless and until the Cure Amount is actually received.

(2) In each period of four consecutive fiscal quarters, there shall be no more than two (2) fiscal quarters in which the cure right set forth in Section 8.04(1) is exercised.

(3) There shall be no more than five (5) fiscal quarters in which the cure rights set forth in Section 8.04(1) are exercised during the term of the Facilities; provided that, so long as the Closing Date Revolving Facility is no longer outstanding, there may be an additional fiscal quarter after the Original Revolving Facility Maturity Date in which the cure rights set forth in this Section 8.04 are exercised during the term of any Revolving Commitments.
Article IX

Administrative Agent and Other Agents

SECTION 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender and Issuing Bank hereby irrevocably appoints Morgan Stanley Senior Funding, Inc., to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.07, 9.11, 9.12, 9.15 and 9.16) are solely for the benefit of the Administrative Agent, the Lenders and each Issuing Bank and the Borrower shall not have rights as a third-party beneficiary of any such provision. The Administrative Agent hereby represents and warrants that it is either (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of Treasury Regulations Section 1.1441-1(b)(2)(ii) or (ii) a Withholding U.S. Branch.

(2) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a Lender and a potential Hedge Bank or Cash Management Bank) and the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender and Issuing Bank 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 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X with respect to the Administrative Agent (including Sections 10.04 and 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including any Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

SECTION 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (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.
SECTION 9.03 Exculpatory Provisions. The Administrative Agent and Collateral Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, each Agent (including the Administrative Agent):

(1) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent or Arranger is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and 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;

(2) 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 such 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 no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(3) 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 the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender, or an Issuing Bank.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, 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. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.
Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each Arranger is named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Loan Documents or the transactions contemplated hereby and thereby; it being understood and agreed that each Arranger shall be entitled to all indemnification and reimbursement rights in favor of the Arrangers as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, each Arranger shall not, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

SECTION 9.04 Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

SECTION 9.05 Certain Rights of the Administrative Agent. If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders.

SECTION 9.06 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of
a Lender or Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the
Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or issuances of such
Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other
experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or
experts.

SECTION 9.07 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers
hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative
Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related
Persons. The exculpatory provisions of this Article shall apply to any such sub agent and to the Agent-Related Persons of the Administrative Agent and
any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as
activities as Administrative Agent. Notwithstanding anything to the contrary in this Section 9.07 or Section 9.15, the Administrative Agent shall not
delegate to any Supplemental Administrative Agent responsibility for receiving any payments under any Loan Document for the account of any Lender,
which payments shall be received directly by the Administrative Agent, without prior written consent of the Borrower (not to unreasonably withheld or
delayed).

SECTION 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative
Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative
Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent or any other Agent-
Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in proportion to
their respective Pro Rata Shares for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses
or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent or any other Agent-
Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in performing its
duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided
that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses
or disbursements resulting from the Administrative Agent’s or any other Agent-Related Person’s gross negligence or willful misconduct (as determined
by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any
Indemnified Liabilities, this Section 9.08 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 the Borrower, provided that such reimbursement by the Lenders shall not
affect the Borrower’s continuing reimbursement obligations with respect thereto, provided further that the failure of any Lender to indemnify or
reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall
survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

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SECTION 9.09 **The Administrative Agent in Its Individual Capacity.** With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a “Lender” and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term “Lender,” “Required Lenders” or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (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.

SECTION 9.10 **Reserved.**

SECTION 9.11 **Resignation by the Administrative Agent.** The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 Business Days prior written notice to the Lenders and the Borrower. If the Administrative Agent becomes subject to a Lender-Related Distress Event, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent becomes subject to an Agent-Related Distress Event, then the Borrower may remove the Administrative Agent from such role upon 15 days’ prior written notice to the Lenders. Such resignation or removal shall take effect upon the appointment of a successor Administrative Agent as provided below.

Notwithstanding anything to the contrary in this Agreement, no successor Administrative Agent shall be appointed unless such successor Administrative Agent represents and warrants that it is (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of U.S. Treasury Regulations Section 1.1441-1, or (ii) a Withholding U.S. Branch.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (provided that the Borrower’s approval shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed within such 30 Business Day period, the Administrative Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, provided that the Borrower’s consent shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing), shall then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.
If no successor Administrative Agent has been appointed pursuant to the foregoing by the 35th Business Day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent’s resignation shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender or Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor’s appointment as Administrative Agent hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.11).

The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

SECTION 9.12 Collateral Matters. Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorizes and directs the Administrative Agent and the Collateral Agent to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required Lenders or the Required Facility Lenders, as applicable, in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders or the Required Facility Lenders, as applicable, of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.
Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Collateral Agent’s authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in this Section 9.12, Section 7.04 and Section 10.24, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower’s expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents, this Section 9.12, Section 7.04 and Section 10.24.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 7.04, Section 10.24 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent’s own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 9.13 [Reserved].

SECTION 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, any Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, any Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, any Issuing Bank and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;
and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and relevant Issuing Banks, 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 the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (i) of the first proviso to Section 10.01(1) of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.
SECTION 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “Supplemental Administrative Agent” and collectively as “Supplemental Administrative Agents”).

(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

SECTION 9.16 Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into any Intercreditor Agreement to the extent contemplated by the terms hereof, and the parties hereto acknowledge that such Intercreditor Agreement is binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements, (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Intercreditor Agreements and to subject the Liens on the Collateral securing the Obligations to the provisions thereof and (c) without any further consent of the Lenders, hereby authorizes and instructs the Administrative Agent and the Collateral Agent to negotiate, execute and deliver on behalf of the Secured Parties any intercreditor agreement or any amendment (or amendment and restatement) to the Collateral Documents or any Intercreditor Agreement contemplated hereunder (including any such amendment (or amendment and restatement) of the First Lien/Second Lien Intercreditor Agreement or other intercreditor agreement to provide for the incurrence of any Indebtedness permitted hereunder that will be secured on a junior lien or pari passu basis to (x) the Obligations and/or (y) any Indebtedness pursuant to the Second Lien Credit Documents). In addition, each Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to enter into (i)

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any amendments to any Intercreditor Agreements, and (ii) any other intercreditor arrangements, in the case of clauses (i) and (ii) to the extent required to
give effect to the establishment of intercreditor rights and privileges as contemplated and required or permitted by this Agreement (including any such
amendment (or amendment and restatement) of the First Lien/Second Lien Intercreditor Agreement or other intercreditor agreement to provide for the
incurrence of any Indebtedness permitted hereunder that will be secured on a junior lien or pari passu basis to (x) the Obligations and/or (y) any
Indebtedness pursuant to the Second Lien Credit Documents). Each Secured Party acknowledges and agrees that any of the Administrative Agent and
Collateral Agent (or one or more of their respective Affiliates) may (but are not obligated to) act as the “Debt Representative” or like term for the
holders of Credit Agreement Refinancing Indebtedness under the security agreements with respect thereto or any Intercreditor Agreement then in effect.
Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or
any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9.17 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or
in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any
Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to,
direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment
of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding
any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory
arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless
the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent
may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

SECTION 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any
payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each
Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand
therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for
the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the
failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because
the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in
circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability
delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent
to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due
the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative
Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of
all other Obligations.
(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than (x) with respect to any amendment or waiver contemplated in clauses (g), (h) or (i) below (in the case of clause (i), to the extent permitted by Section 2.14), which shall only require the consent of the Required Facility Lenders under the applicable Facility or Facilities, as applicable (and not the Required Lenders) and (y) with respect to any amendment or waiver contemplated in clauses (a), (b) or (c), which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) or by the Administrative Agent with the consent of the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible, however, to the extent the final form of such waiver, consent or amendment has been delivered to the Administrative Agent at least one Business Day prior to the proposed effectiveness of the consents by the Lenders party thereto, the Administrative Agent shall acknowledge such waiver, consent or amendment (i) immediately, in the case of any amendment which does not require the consent of any existing Lender under this Agreement or (ii) otherwise, within two hours of the time copies of the Required Lender consents or other applicable Lender consents required by this Section 10.01 have been provided to the Administrative Agent; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or 4.02 or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums: (i) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans, (ii) the waiver of any Default or Event of Default, and (iii) any change to the definition of “First Lien Net Leverage Ratio,” “Secured Net Leverage Ratio,” “Total Net Leverage Ratio,” “Interest Coverage Ratio” or, in each case, in the component definitions thereof;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amount, or any fees or other amounts payable hereunder or under any other Loan Document to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a reduction in any rate of interest or any fees: any change to the definition of “First Lien Net Leverage Ratio,” “Secured Net Leverage Ratio,” “Total Net Leverage Ratio,” “Interest Coverage Ratio”, or, in each case, in the component definitions thereof; provided that only the consent of (A) the Required Lenders shall be necessary to amend the definition of “Default Rate” and (B) the Required Lenders or, with respect to any Default Rate payable in respect of the Revolving Facility, the Required Facility Lenders under the Closing Date Revolving Facility, shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;
(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), change any provision of this Section 10.01 or the definition of “Required Lenders” or “Required Facility Lenders,” “Pro Rata Share” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents or Section 2.13 or 8.03, without the written consent of each Lender directly and adversely affected thereby;

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) amend, waive or otherwise modify any term or provision (including the waiver of any conditions set forth in Section 4.02 as to any Credit Extension under one or more Revolving Facilities) which directly affects Lenders under one or more Revolving Facilities and does not directly affect Lenders under any other Facilities, in each case, without the written consent of the Required Facility Lenders under such applicable Revolving Facility or Facilities with respect to Revolving Commitments (and in the case of multiple Facilities which are affected, such Required Facility Lenders shall consent together as one Facility); provided, however, that the waivers described in this clause (g) shall not require the consent of the Required Lenders or any other Lenders other than the Required Facility Lenders under the applicable Revolving Facility or Facilities (it being understood that any amendment to the conditions of effectiveness of Incremental Commitments set forth in Section 2.14 shall be subject to clause (i) below);

(h) amend, waive or otherwise modify the Financial Covenant or any definition related thereto (solely in respect of the use of such defined terms in the Financial Covenant) or waive any Default or Event of Default resulting from a failure to perform or observe the Financial Covenant without the written consent of the Required Facility Lenders under the applicable Revolving Facility or Facilities with respect to Revolving Commitments (such Required Facility Lenders shall consent together as one Facility); provided, however, that the amendments, waivers and other modifications described in this clause (h) shall not require the consent of the Required Lenders or any other Lenders other than the Required Facility Lenders under the applicable Revolving Facility or Facilities;

(i) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding (subject to the requirements of Section 2.14) with respect to Incremental Term Loans and Incremental Revolving Commitments, but excluding the rate of interest applicable thereto which shall be subject to clause (c) above)) which directly affects Lenders of one or more Incremental Term Loans or Incremental Revolving Commitments and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Incremental Term Loans or Incremental Revolving Commitments (and in the case of multiple Facilities which are affected, such Required Facility Lenders shall consent together as one Facility); provided, however, that, to the extent
permitted under Section 2.14, no amendments or waivers described in this clause (i) shall require the consent of the Required Lenders or any other Lenders and shall only require the consent of the Required Facility Lenders under such applicable Incremental Term Loans or Incremental Revolving Commitments, including to the extent such amendment or waiver includes provisions that benefit the Lenders under any other Facility and are not adverse to such other Lenders;

provided that:

(I) no amendment, waiver or consent shall, unless in writing and signed by each Issuing Bank in addition to the Lenders required above, affect the rights or duties of such Issuing Bank under this Agreement or any Issuing Bank Document relating to any Letter of Credit issued or to be issued by it; provided, however, that this Agreement may be amended to adjust the mechanics related to the issuance of Letters of Credit, including mechanical changes relating to the existence of multiple Issuing Banks, with only the written consent of the Administrative Agent, the applicable Issuing Bank and the Borrower so long as the obligations of the Revolving Lenders, if any, who have not executed such amendment, and if applicable the other Issuing Banks, if any, who have not executed such amendment, are not adversely affected thereby;

(II) [reserved]

(III) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(IV) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

provided further that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement (i) that is for the purpose of adding the holders of Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Permitted Indebtedness that is Secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and provided that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Intercreditor Agreement in connection with joiners and supplements; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;
(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans, the Revolving Loans and L/C Obligations and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time;

(E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (or the Collateral Agent, as applicable) to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least five (5) Business Days’ prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; provided that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Incremental Loans, any borrowing of Other Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively; and

(F) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, (i) effect changes to any Mortgage as may be necessary or appropriate in the opinion of the Collateral Agent and (ii) effect changes to this Agreement that are necessary and appropriate to effect the offering process set forth in Section 2.05(1)(e).
(2) In addition, notwithstanding anything to the contrary contained in this Section 10.01, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("Replaced Loans") with replacement term loans ("Replacement Loans") hereunder; provided that

(a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses incurred in connection with such refinancing of Replaced Loans with such Replacement Loans,

(b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) shall not be higher than the All-In Yield for such Replaced Loans (or similar interest rate spread applicable to such Replaced Loans) immediately prior to such refinancing,

(c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing, and

(d) all other terms (other than with respect to pricing, interest rate margins, fees, discounts, rate floors and prepayment or redemption terms) applicable to such Replacement Loans shall either, at the option of the Borrower, (i) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Replacement Loans (as determined by the Borrower in good faith) or (ii) if not otherwise consistent with the terms of such Replaced Loans, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Replaced Loans, except with respect to covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing.

Each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents and related documents executed by Loan Parties in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein) and

(b) if the Administrative Agent and the Borrower shall have jointly identified an obvious error, mistake, ambiguity, incorrect cross-reference or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

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SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (2) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.
THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons or any Arranger (collectively, the “Agent Parties”) have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private-Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.
Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided further that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs and to the extent not paid or reimbursed on or prior to the Closing Date, to pay or reimburse the Administrative Agent and the Arrangers for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and such Arrangers incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of a single U.S. counsel and, if necessary, a single local counsel in each relevant material jurisdiction, and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent, each Issuing Bank and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) Business Days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each Issuing Bank, each other Lender, the Arrangers and their respective Related Persons (collectively, the “Indemnitees”) from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and
other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole
in each relevant material jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each
group of affected Indemnitees similarly situated taken as a whole) any actual or threatened claim, litigation, investigation or proceeding relating to the
Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans, the
Letters of Credit or the use, or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under
a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), whether
based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation,
investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “Indemnified Liabilities”);
provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted
from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final,
non-appealable judgment of a court of competent jurisdiction, a material breach of any obligations under any Loan Document by such Indemnitee or
any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or any dispute solely
among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any
similar role under any Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Affiliates (as determined by
a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in
this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall
contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified
Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information
or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent
such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith
or gross negligence of such Indemnitee), 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 or arising out of its activities in connection herewith or therewith
(whether before or after the Closing Date) other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee
to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation,
litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation,
litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any
Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is
consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) Business Days after written demand therefor. The agreements in
this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate
Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes
that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return
promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnitee for any such fees, expenses or
damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof.
SECTION 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect.

SECTION 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and registered assigns permitted hereby, except that neither Holdings nor the Borrower may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an assignee in accordance with the provisions of Section 10.07(b) (such an assignee, an “Eligible Assignee”) and (A) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, in accordance with the provisions of Section 10.07(h), (B) in the case of any Eligible Assignee that is Holdings, the Borrower or any Subsidiary of the Borrower, in accordance with the provisions of Section 10.07(l), or (C) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, in accordance with the provisions of Section 10.07(k), (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) or (or in the case of any such attempted assignment or transfer to a Disqualified Institution shall be subject to the provisions set forth in the fourth sentence of the definition of “Lender”). 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, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. 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 Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and
(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1.0 million, in the case of USD Term Loans, not less than €1.0 million, in the case of Euro Term Loans, and not less than $5.0 million, in the case of Revolving Loans and Revolving Commitments, unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing, the Borrower otherwise consents (in the case of an assignment of Term Loans, each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned (it being understood that assignments under separate Facilities shall not be required to be made on a pro rata basis).

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if a “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date or (2) in respect of an assignment of all or a portion of the Term Loans only, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that (x) consent for any affiliate of a Disqualified Institution that is not a Disqualified Institution may be withheld, (y) the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice of a failure to respond to such request for assignment and (z) no consent of the Borrower shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(h), (k) or (l);

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; provided that no consent of the Administrative Agent shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(h), (k) or (l);

(C) the consent of each applicable Issuing Bank at the time of such assignment (such consent not to be unreasonably withheld or delayed) shall be required; provided that no consent of the applicable Issuing Bank shall be required for any assignment not related to Revolving Commitments or Revolving Exposure; and
(E) with respect to assignments of any Commitments and Loans under the Revolving Facility, the consent of TPG VII Manta Holdings II, LP (such consent not to be unreasonably withheld or delayed) shall be required (so long as TPG VII Manta Holdings II, LP and its affiliates hold, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower) unless an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if a “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date (it being understood that TPG VII Manta Holdings II, LP shall be an express third party beneficiary of the provisions in this Section 10.07(b)(iii)(E)).

(iv) Assignment and Assumption. 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), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). Other than in the case of assignments pursuant to Section 10.07(l), the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all applicable tax forms.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to Holdings, the Borrower or any of the Borrower’s Subsidiaries except as permitted under Sections 2.05(1)(e) and 10.07(l), (B) subject to Sections 10.07(h), (k) and (l) below, to any Affiliate of the Borrower, (C) to a natural person, (D) to any Disqualified Institution or (E) to any Defaulting Lender.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07 (and, in the case of an Affiliated Lender or a Person that, after giving effect to such assignment, would become an Affiliated Lender, to the requirements of clause (h) of this Section 10.07), from and after the effective date specified in each Assignment and Assumption, other than in connection with an assignment pursuant to Section 10.07(l), (x) the assignee thereunder shall be a party
to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent’s Office a copy of each Assignment and Assumption delivered to it, each Affiliated Lender Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying Unreimbursed Amounts), L/C Borrowings and amounts due under Section 2.03, owing to each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender, nor shall the Administrative Agent be obligated to monitor the aggregate amount of the Term Loans or Incremental Term Loans held by Affiliated Lenders.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower and its Affiliates, a Defaulting Lender or a Disqualified Institution) (each, a “Participant”) in all or a portion of such Lender’s rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans (including such Lender’s participations in L/C Obligations) owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; 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 the first proviso to Section 10.01(1) (other than clauses (g),(h) and (i) thereof) that directly and adversely affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable) as though it were a Lender; provided that any forms required to
be provided under Section 3.01(3) shall be provided solely to the participating Lender), 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 subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; provided that such Participant shall agree to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 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 the Borrower’s prior written consent. Each Lender that sells a participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes or such disclosure is otherwise required under Treasury Regulations Section 5f.103-1(c).

(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 any other central bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “SPC”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. 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 the 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 (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 hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.
(h) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures determined by such Affiliated Lender in its sole discretion or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) Affiliated Lenders will not (A) receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II or (B) make any challenge to the Administrative Agent’s or any other Lender’s attorney-client privilege on the basis of its status as a Lender;

(ii) [reserved];

(iii) each Lender (other than any other Affiliated Lender) that assigns any Loans to an Affiliated Lender pursuant to clause (y) above shall deliver to the Administrative Agent and the Borrower a customary Big Boy Letter;

(iv) the aggregate principal amount of Term Loans of any Class under this Agreement held by Affiliated Lenders at the time of any such purchase or assignment shall not exceed 25% of the aggregate principal amount of Term Loans of such Class outstanding at such time under this Agreement (such percentage, the “Affiliated Lender Cap”); provided that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Term Loans of any Class held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void ab initio;

(v) as a condition to each assignment pursuant to this subsection (h), the Administrative Agent and the Borrower shall have been provided a notice in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender (in its capacity as such) shall waive any right to bring any action in connection with such Loans against the Administrative Agent, in its capacity as such; and

(vi) the assigning Lender and the Affiliated Lender purchasing such Lender’s Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit D-2 hereto (an “Affiliated Lender Assignment and Assumption”).

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Term Loans pursuant to this subsection (h) may, in its sole discretion, contribute, directly or indirectly, the principal amount of such Term Loans or any portion thereof, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Term Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Term Loans shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

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Each Affiliated Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. The Administrative Agent may conclusively rely upon any notice delivered pursuant to the immediately preceding sentence or pursuant to clause (v) of this subsection (h) and shall not have any liability for any losses suffered by any Person as a result of any purported assignment to or from an Affiliated Lender.

(i) Notwithstanding anything in Section 10.01 or the definition of “Required Lenders,” or “Required Facility Lenders” to the contrary, for purposes of determining whether the Required Lenders and Required Facility Lenders (in respect of a Class of Term Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(j), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action and, except with respect to any amendment, modification, waiver, consent or other action (x) in Section 10.01 requiring the consent of all Lenders, all Lenders directly and adversely affected or specifically such Lender, (y) that alters an Affiliated Lender’s pro rata share of any payments given to all Lenders, or (z) affects the Affiliated Lender (in its capacity as a Lender) in a manner that is disproportionate to the effect on any Lender in the same Class, the Loans held by an Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Lender vote (and shall be deemed to have been voted in the same percentage as all other applicable Lenders voted if necessary to give legal effect to this paragraph) (but, in any event, in connection with any amendment, modification, waiver, consent or other action, shall be entitled to any consent fee, calculated as if all of such Affiliated Lender’s Loans had voted in favor of any matter for which a consent fee or similar payment is offered).

(j) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that, and each Affiliated Lender Assignment and Assumption shall provide a confirmation that, if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans held by such Affiliated Lender in any manner in the Administrative Agent’s sole discretion, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans held by it as the Administrative Agent directs; provided that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a disproportionately adverse manner than the proposed treatment of similar Obligations held by Term Lenders that are not Affiliated Lenders.
(k) Although any Debt Fund Affiliate(s) shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(h), (i) or (j), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) (for the avoidance of doubt, without requiring any representation as to the possession of material non-public information by such Affiliate) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of “Required Lenders” to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Term Loans, Revolving Commitments and Revolving Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Term Loans, Revolving Commitments and Revolving Loans of Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(l) Any Lender may, so long as no Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to Holdings, the Borrower or any Subsidiary of the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) or (y) open market purchases on a non-pro rata basis; provided that:

(i) (x) if the assignee is Holdings or a Subsidiary of the Borrower, upon such assignment, transfer or contribution, the applicable assignee shall automatically be deemed to have contributed or transferred the principal amount of such Term Loans, plus all accrued and unpaid interest thereon, to the Borrower; or (y) if the assignee is the Borrower (including through contribution or transfers set forth in clause (x)), (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register;

(ii) [reserved];

(iii) each Lender (other than an Affiliated Lender) that assigns any Loans to Holdings, the Borrower or any Subsidiary of the Borrower pursuant to clause (y) above shall deliver to the Administrative Agent and the Borrower a customary Big Boy Letter; and

(iv) purchases of Term Loans pursuant to this subsection (l) may not be funded with the proceeds of Revolving Loans.

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (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.
(n) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

SECTION 10.08 Resignation of Issuing Bank. Notwithstanding anything to the contrary contained herein, any Issuing Bank may, upon thirty (30) Business Days’ notice to the Borrower and the Lenders, resign as an Issuing Bank, so long as on or prior to the expiration of such 30-Business Day period with respect to such resignation, the relevant Issuing Bank shall have identified a successor Issuing Bank reasonably acceptable to the Borrower willing to accept its appointment as successor Issuing Bank. In the event of any such resignation of an Issuing Bank, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Issuing Bank hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant Issuing Bank except as expressly provided above. If an Issuing Bank resigns as an Issuing Bank, it shall retain all the rights and obligations of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(3)).

SECTION 10.09 Confidentiality. Each of the Agents, the Arrangers, the Lenders and each Issuing Bank agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (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, with such Affiliate being responsible for such Person’s compliance with this Section 10.09; provided, however, that such Agent, Arranger, Lender or Issuing Bank, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); provided, however, that each Agent, each Arranger, each Lender and each Issuing Bank agrees to notify the Borrower promptly thereof (except in connection with any request as part of a regulatory examination) to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; provided that such Agent, such Arranger, such Lender or such Issuing Bank, as applicable, agrees that it will (x) notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of a regulatory examination) unless such notification is prohibited by law, rule or regulation and (y) seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) subject to Section 10.07(1)(b)(v)(D), any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be an Additional Lender or (ii) with the prior consent of the
Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; provided that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require “click through” or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a “due diligence” defense, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arranger, any Lender, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender, such Issuing Bank or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, the Issuing Banks, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, “Information” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that no information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed nonconfidential on account of such information not being clearly identified at the time of delivery as being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent, each Arranger, each Lender and each Issuing Bank acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents, the Arrangers, the Lenders and any Issuing Bank under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.
SECTION 10.10 Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each Issuing Bank is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or such Issuing Bank to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and each Issuing Bank under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender or such Issuing Bank may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.12 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.13 Electronic Execution of Assignments and Certain Other Documents. The words “delivery,” “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms.
SECTION 10.14 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.16 GOVERNING LAW.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.
(c) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

SECTION 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

SECTION 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative 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 the Borrower, each Agent, each Lender, each other party hereto and their respective successors and assigns.

SECTION 10.19 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 under any of the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of setoff, rights on account of any banker’s lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 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 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by Administrative Agent or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party’s name, product photographs, logo or trademark; provided that any such material shall be provided to the Borrower for its review a reasonable period of time in advance of publication. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and the Arrangers.

SECTION 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as
applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

SECTION 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm’s-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, Arranger and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower, Holdings or any of their respective 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, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.

(a) The Lenders and the Issuing Banks hereby irrevocably agree that the Liens granted to the Administrative Agent or the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder (including any Receivables Financing Transaction)) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance
with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents and (vii) to the extent such Collateral otherwise becomes Excluded Assets. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders and the Issuing Banks hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary, or otherwise becoming an Excluded Subsidiary. The Lenders and the Issuing Banks hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, consents, acknowledgements, and agreements necessary or desirable to evidence or confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender or Issuing Bank. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, when the Termination Conditions are satisfied, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements, (iii) contingent obligations not then due and (iv) Outstanding Amount of L/C Obligations related to any Letter of Credit that has been Cash Collateralized, backstopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Liens permitted by the Loan Documents, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any Lien permitted under Section 7.01 to be senior to the Liens in favor of the Collateral Agent.

SECTION 10.25 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

MCAFEE, LLC, as the Borrower

By: /s/ Michael Berry
   Name: Michael Berry
   Title: Chief Financial Officer

MCAFEE FINANCE 2, LLC, as Holdings

By: /s/ Michael Berry
   Name: Michael Berry
   Title: Vice President

[Signature Page to First Lien Credit Agreement]
MORGAN STANLEY SENIOR FUNDING, INC., as Administrative Agent, Collateral Agent, Issuing Bank, Revolving Lender and Term Lender

By: /s/ Andrew W. Earls

Name: Andrew W. Earls
Title: Authorized Signatory

[Signature Page to First Lien Credit Agreement]
JPMORGAN CHASE BANK, N.A., as Issuing Bank and Revolving Lender

By: /s/ Bruce S. Borden
Name: Bruce S. Borden
Title: Executive Director

[Signature Page to First Lien Credit Agreement]
GOLDMAN SACHS BANK USA, as Revolving Lender

By: /s/ Thomas M. Manning
   Name: Thomas M. Manning
   Title: Authorized Signatory

[Signature Page to First Lien Credit Agreement]
BANK OF AMERICA, N.A., as Issuing Bank and
Revolving Lender

By: /s/ Michael Roane
   Name: Michael Roane
   Title: VP

[Signature Page to First Lien Credit Agreement]
BARCLAYS BANK PLC, as Revolving Lender

By: /s/ Chris Walton
Name: Chris Walton
Title: Director

[Signature Page to First Lien Credit Agreement]
CITIBANK, N.A., as Issuing Bank and Revolving Lender

By: /s/ David Leland
Name: David Leland
Title: Vice President

[Signature Page to First Lien Credit Agreement]
[Signature Page to First Lien Credit Agreement]
ROYAL BANK OF CANADA, as Revolving Lender

By: /s/ James S. Wolfe
Name: James S. Wolfe
Title: Managing Director

[Signature Page to First Lien Credit Agreement]
UBS AG, Stamford Branch, as Revolving Lender

By: /s/ Craig Pearson
   Name: Craig Pearson
   Title: Associate Director

By: /s/ Darlene Arias
   Name: Darlene Arias
   Title: Director

[Signature Page to First Lien Credit Agreement]
MIZUHO BANK, LTD., as Revolving Lender

By: /s/ Stephen J. Jeselson

Name: Stephen J. Jeselson
Title: Managing Director

[Signature Page to First Lien Credit Agreement]
AMENDMENT NO. 1 TO FIRST LIEN CREDIT AGREEMENT

This AMENDMENT NO. 1 TO FIRST LIEN CREDIT AGREEMENT, dated as of January 3, 2018 (this “Amendment”), is entered into by and among McAfee, LLC, a Delaware limited liability company (the “Borrower”), Morgan Stanley Senior Funding, Inc., as administrative agent (the “Administrative Agent”), and the undersigned Initial Incremental Term Lenders (as defined below).

PRELIMINARY STATEMENTS:

WHEREAS, the Borrower, McAfee Finance 2, LLC, a Delaware limited liability company (“Holdings”), the Administrative Agent and the lenders from time to time party thereto are party to that certain First Lien Credit Agreement, dated as of September 29, 2017 (as amended, supplemented or otherwise modified prior to the date hereof, the “Credit Agreement”; capitalized terms not otherwise defined in this Amendment have the same meanings as specified in the Credit Agreement);

WHEREAS, pursuant to that certain Commitment Letter dated November 21, 2017, as amended, restated, supplemented or otherwise modified prior to the date hereof, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs Bank USA and UBS Securities LLC, as joint lead arrangers and joint bookrunners, have agreed to arrange the Incremental Facilities (as defined below) in respect of the Credit Agreement on the terms set forth therein and herein;

WHEREAS, (i) pursuant to Section 2.14(1) of the Credit Agreement, the Borrower has delivered a request for a Term Loan Increase to the Administrative Agent in an aggregate principal Dollar-denominated amount of $324,000,000 and (ii) the Borrower has requested that each financial institution signatory hereto as an Incremental USD Term Lender (in such capacity, each an “Initial Incremental USD Term Lender”) provide, pursuant to Section 2.14(4)(c) of the Credit Agreement, an Incremental Term Commitment (the “Initial Incremental USD Term Loan Commitment”) under the Amended Credit Agreement (as defined below), and make Incremental Term Loans (with respect to each Initial Incremental Term Lender, its “Initial Incremental USD Term Loans”) as a Term Loan Increase of the Closing Date USD Term Loans, which Initial Incremental USD Term Loans will be of the same Class as the Closing Date USD Term Loans, in an aggregate principal amount equal to $324,000,000 on the First Amendment Effective Date (as defined below), the proceeds of which will be used by the Borrower, directly or indirectly, to finance certain acquisitions and investments, including all or a portion of the purchase price for Skyhigh Networks, Inc., to pay fees, costs and expenses in connection therewith and the transactions contemplated by this Amendment and for other general corporate purposes (collectively, the “Amendment Transactions”), and each Initial Incremental USD Term Lender is prepared to provide its Initial Incremental USD Term Loan Commitment and to make the Initial Incremental USD Term Loans pursuant to the Amended Credit Agreement in the principal amount set forth opposite such Initial Incremental USD Term Lender’s name under the heading “Initial Incremental USD Term Loan Commitment” on Schedule 2.01(a) to the Credit Agreement as amended by this Amendment (the “Amended Credit Agreement”), in each case subject to the other terms and conditions set forth herein;
WHEREAS, (i) pursuant to Section 2.14(1) of the Credit Agreement, the Borrower has delivered a request for a Term Loan Increase to the
Administrative Agent in an aggregate principal Euro-denominated amount of €150,000,000 and (ii) the Borrower has requested that each financial
institution signatory hereto as an Incremental Euro Term Lender (in such capacity, each an “Initial Incremental Euro Term Lender” and, together with
the Initial Incremental USD Term Lenders, the “Initial Incremental Term Lenders”) provide, pursuant to Section 2.14(d)(c) of the Credit Agreement,
an Incremental Term Commitment (the “Initial Incremental Euro Term Loan Commitment” and, together with the Initial Incremental USD Term
Loan Commitments, the “Initial Incremental Term Loan Commitments”) under the Amended Credit Agreement, and make Incremental Term Loans
(with respect to each Initial Incremental Euro Term Lender, its “Initial Incremental Euro Term Loans” and, together with the Initial Incremental USD
Term Loans, the “Initial Incremental Term Loans”) as a Term Loan Increase of the Closing Date Euro Term Loans, which Initial Incremental Euro
Term Loans will be of the same Class as the Closing Date Euro Term Loans, in an aggregate principal amount equal to €150,000,000 on the First
Amendment Effective Date, the proceeds of which will be used by the Borrower, directly or indirectly, for the Amendment Transactions, and each Initial
Incremental Euro Term Lender is prepared to provide its Initial Incremental Euro Term Loan Commitment and to make the Initial Incremental Euro
Term Loans pursuant to the Amended Credit Agreement in the principal amount set forth opposite such Initial Incremental Euro Term Lender’s name
under the heading “Initial Incremental Euro Term Loan Commitment” on Schedule 2.01(a) to the Amended Credit Agreement, in each case subject to
the other terms and conditions set forth herein;

WHEREAS, the Borrower, the Initial Incremental Term Lenders and the Administrative Agent are entering into this Amendment in order
to evidence such Initial Incremental Term Loan Commitments and such Initial Incremental Term Loans in accordance with Section 2.14(6) of the Credit
Agreement;

WHEREAS, in furtherance of the foregoing, the Borrower, the undersigned Initial Incremental Term Lenders and the Administrative
Agent (pursuant to its authority under Section 2.14(6) of the Credit Agreement) have agreed to amend the Credit Agreement pursuant to Section 2.14(6)
of the Credit Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which
are hereby acknowledged), the parties hereto hereby agree as follows:

SECTION 1. Definitions. As used in this Amendment, the following terms shall have the meanings set forth below:

“Incremental Facilities” means the Initial Incremental Term Loans funded pursuant to the Initial Incremental Term Commitments on the
First Amendment Effective Date (as defined in Section 6).

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended
from time to time.
SECTION 2. Amendments to Credit Agreement. The Credit Agreement is, effective as of the First Amendment Effective Date and subject to the satisfaction of the conditions precedent set forth in Section 6 hereof, hereby amended as follows:

(a) The following shall be added to the Credit Agreement as Schedule 2.01(a) thereof:

**Initial Incremental USD Term Loan Commitments:**

<table>
<thead>
<tr>
<th>Lender</th>
<th>Pro Rata Share</th>
<th>Initial Incremental Term Loan Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank of America, N.A.</td>
<td>100.00%</td>
<td>$324,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.00%</td>
<td>$324,000,000</td>
</tr>
</tbody>
</table>

**Initial Incremental Euro Term Loan Commitments:**

<table>
<thead>
<tr>
<th>Lender</th>
<th>Pro Rata Share</th>
<th>Initial Incremental Term Loan Commitment</th>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.00%</td>
<td>€150,000,000</td>
</tr>
</tbody>
</table>

(b) Section 1.01 of the Credit Agreement is hereby amended by adding the following new definitions thereto in the proper alphabetical order:

- **“Euro Amortization Percentage”** means the percentage equal to the product of (x) 0.25% multiplied by (y) the result of €507,000,000.00 divided by €505,732,500.00.
- **“First Amendment”** means that certain Amendment No. 1 to First Lien Credit Agreement, dated as of January 3, 2018, among the Borrower, the Administrative Agent and the Initial Incremental Term Lenders party thereto.
- **“First Amendment Effective Date”** means January 3, 2018.
- **“Initial Incremental Euro Term Lender”** means, at any time, any Lender that has an Initial Incremental Euro Term Loan Commitment or an Initial Incremental Euro Term Loan at such time.
- **“Initial Incremental Euro Term Loan Commitment”** means, as to each Initial Incremental Euro Term Lender, its obligation to make an Initial Incremental Euro Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Initial Incremental Euro Term Lender’s name on Schedule 2.01(a) under the caption “Initial Incremental Euro Term Loan Commitment”.

3
“Initial Incremental Euro Term Loans” means the Term Loans made by each Initial Incremental Euro Term Lender on the First Amendment Effective Date to the Borrower pursuant to Section 2.01(1)(d). From and after the First Amendment Effective Date, the Initial Incremental Euro Term Loans shall constitute Closing Date Euro Term Loans for all purposes under this Agreement and the other Loan Documents.

“Initial Incremental Term Lenders” means, collectively, the Initial Incremental USD Term Lenders and the Initial Incremental Euro Term Lenders.

“Initial Incremental Term Loan Commitments” means, collectively, the Initial Incremental USD Term Loan Commitments and the Initial Incremental Euro Term Loan Commitments.

“Initial Incremental Term Loans” means, collectively, the Initial Incremental USD Term Loans and the Initial Incremental Euro Term Loans. From and after the First Amendment Effective Date, the Initial Incremental Term Loans shall constitute Closing Date Term Loans for all purposes under this Agreement and the other Loan Documents.

“Initial Incremental USD Term Lender” means, at any time, any Lender that has an Initial Incremental USD Term Loan Commitment or an Initial Incremental USD Term Loan at such time.

“Initial Incremental USD Term Loan Commitment” means, as to each Initial Incremental USD Term Lender, its obligation to make an Initial Incremental USD Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Initial Incremental USD Term Lender’s name on Schedule 2.01(a) under the caption “Initial Incremental USD Term Loan Commitment”.

“Initial Incremental USD Term Loans” means the Term Loans made by each Initial Incremental USD Term Lender on the First Amendment Effective Date to the Borrower pursuant to Section 2.01(1)(c). From and after the First Amendment Effective Date, the Initial Incremental USD Term Loans shall constitute Closing Date USD Term Loans for all purposes under this Agreement and the other Loan Documents.

“USD Amortization Percentage” means the percentage equal to the product of (x) 0.25% multiplied by (y) the result of $2,555,000,000.00 divided by $2,548,612,500.00.
(c) The definition of the term “Closing Date” in Section 1.01 of the Credit Agreement is hereby amended by replacing the text “Section 2.01(1)” therein with the text “Section 2.01(1)(a) and (b)”.

(d) The definition of the term “Closing Date Euro Term Loans” in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Closing Date Euro Term Loans” means (a) prior to the First Amendment Effective Date, the Euro Term Loans made by the Euro Term Lenders on the Closing Date to the Borrower pursuant to Section 2.01(1)(b), and (b) from and after the First Amendment Effective Date, the Euro Term Loans (including the Initial Incremental Euro Term Loans) made by the Euro Term Lenders to the Borrower pursuant to Section 2.01(1)(b) and (d).

(e) The definition of the term “Closing Date USD Term Loans” in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Closing Date USD Term Loans” means (a) prior to the First Amendment Effective Date, the USD Term Loans made by the USD Term Lenders on the Closing Date to the Borrower pursuant to Section 2.01(1)(a), and (b) from and after the First Amendment Effective Date, the USD Term Loans (including the Initial Incremental USD Term Loans) made by the USD Term Lenders to the Borrower pursuant to Section 2.01(1)(a) and (c).

(f) Section 2.01(1) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“(1) Term Borrowings.

(a) Subject to the terms and conditions set forth in Section 4.01 hereof, each USD Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date USD Term Loans denominated in Dollars in an aggregate principal amount equal to such USD Term Lender’s Closing Date USD Term Loan Commitment on the Closing Date. Amounts borrowed under this Section 2.01(1)(a) and repaid or pre paid may not be reborrowed. The Closing Date USD Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) Subject to the terms and conditions set forth in Section 4.01 hereof, each Euro Term Lender severally agrees to make to the Borrower on the Closing Date one or more Closing Date Euro Term Loans denominated in Euros in an aggregate principal amount equal to such Euro Term Lender’s Closing Date Euro Term Loan Commitment on the Closing Date. Amounts borrowed under this Section 2.01(1)(b) and repaid or pre paid may not be reborrowed. The Closing Date Euro Term Loans shall be EURIBOR Rate Loans.
(c) Subject to the terms and conditions set forth in the First Amendment, each Initial Incremental USD Term Lender severally agrees to make to the Borrower on the First Amendment Effective Date one or more Initial Incremental Term Loans denominated in Dollars in an aggregate principal amount equal to such Initial Incremental USD Term Lender’s Initial Incremental USD Term Loan Commitment. Amounts borrowed under this Section 2.01(1)(c) and repaid or prepaid may not be reborrowed. The Initial Incremental USD Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein. For the avoidance of doubt, from and after the First Amendment Effective Date, the Initial Incremental USD Term Loans shall constitute Closing Date USD Term Loans and be of the same Class as the Closing Date USD Term Loans.

(d) Subject to the terms and conditions set forth in the First Amendment, each Initial Incremental Euro Term Lender severally agrees to make to the Borrower on the First Amendment Effective Date one or more Initial Incremental Euro Term Loans denominated in Euros in an aggregate principal amount equal to such Initial Incremental Term Lender’s Initial Incremental Term Loan Commitment. Amounts borrowed under this Section 2.01(1)(d) and repaid or prepaid may not be reborrowed. The Initial Incremental Euro Term Loans shall be EURIBOR Rate Loans. For the avoidance of doubt, from and after the First Amendment Effective Date, the Initial Incremental Euro Term Loans shall constitute Closing Date Euro Term Loans and be of the same Class as the Closing Date Euro Term Loans.

(g) Section 2.02(2) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Eurodollar Rate Loans or EURIBOR Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent (or, with respect to Borrowings of Incremental Loans, to such Incremental Lender as the Administrative Agent may reasonably agree for such purpose) in Same Day Funds at the Administrative Agent’s Office, or to such other account as the Administrative Agent may specify, not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 3:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4 for any Borrowing, the Administrative Agent (or, with respect to Incremental Loans, such Incremental Lender as the Administrative Agent may reasonably agree) shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent (or, with respect to Incremental Loans, such applicable Incremental Lender) either by (a) crediting the account(s) of the
Borrower on the books of the Administrative Agent with the amount of such funds or (b) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent (and in the case of clause (b), such Incremental Lender, if applicable); provided that if on the date the Committed Loan Notice with respect to a Borrowing under a Revolving Facility is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing and second, to the Borrower as provided above.

(h) Section 2.06(2) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“(2) Mandatory. The Closing Date USD Term Loan Commitment of each USD Term Lender on the Closing Date was automatically and permanently reduced to $0 upon the making of such Lender’s Closing Date Term Loans to the Borrower pursuant to Section 2.01(1)(a). The Closing Date Euro Term Loan Commitment of each Euro Term Lender on the Closing Date shall be automatically and permanently reduced to €0 upon the making of such Lender’s Closing Date Euro Term Loans to the Borrower pursuant to Section 2.01(1)(b). The Initial Incremental USD Term Loan Commitment of each Initial Incremental USD Term Lender on the First Amendment Effective Date shall be automatically and permanently reduced to $0 upon the making of such Initial Incremental USD Term Lender’s Initial Incremental USD Term Loans to the Borrower pursuant to Section 2.01(1)(c). The Initial Incremental Euro Term Loan Commitment of each Initial Incremental Euro Term Lender on the First Amendment Effective Date shall be automatically and permanently reduced to €0 upon the making of such Initial Incremental Euro Term Lender’s Initial Incremental Euro Term Loans to the Borrower pursuant to Section 2.01(1)(d). The Revolving Commitment of each Revolving Lender shall automatically and permanently terminate on the Maturity Date for the applicable Revolving Facility.”

(i) Section 2.07(1) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“(1) Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (a) on the last Business Day of each March, June, September and December, commencing with March 30, 2018, an aggregate principal amount (x) in Dollars equal to the USD Amortization Percentage of the aggregate principal amount of all Closing Date USD Term Loans outstanding on the First Amendment Effective Date (after giving effect to the Initial Incremental Term Loans pursuant to the First Amendment) and (y) in Euros equal to the Euro Amortization Percentage of the aggregate principal amount of all Closing Date Euro Term Loans outstanding on the First Amendment Effective Date (after giving effect to the Initial Incremental Term Loans pursuant to the First Amendment) (in each case, which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in
Section 2.05) and (b) on the Maturity Date for the Closing Date Term Loans, the aggregate principal amount of all Closing Date Term Loans outstanding on such date. In connection with any Incremental Term Loans that constitute part of the same Class as the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, the Borrower and the Administrative Agent shall be permitted to adjust the rate of prepayment in respect of such Class such that the Term Lenders holding Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, comprising part of such Class continue to receive a payment that is not less than the same Dollar amount that such Term Lenders would have received absent the incurrence of such Incremental Term Loans; provided, that if such Incremental Term Loans are to be “fungible” with the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, notwithstanding any other conditions specified in this Section 2.07(1), the amortization schedule for such “fungible” Incremental Term Loan may provide for amortization in such other percentage(s) to be agreed by the Borrower and the Administrative Agent to ensure that the Incremental Term Loans will be “fungible” with the Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable.”

(j) Section 6.14 of the Credit Agreement is hereby amended by (i) adding the text “made on the Closing Date” immediately after the text “Closing Date Term Loans” in subclause (a) and deleting the word “(i)” therein, (ii) replacing the word “and” immediately preceding subclause (b) with a comma and (iii) adding the following language immediately prior to the period at the end thereof:

“and (c) the Initial Incremental Term Loans will be used solely (i) to finance certain acquisitions and investments, including all or a portion of the purchase price for Skyhigh Networks, Inc., (ii) to pay fees, costs and expenses related to such acquisitions and investments and the transactions contemplated by the First Amendment and any other transaction occurring on the First Amendment Effective Date and (iii) for other general corporate purposes not prohibited by this Agreement”

SECTION 3. The Initial Incremental Term Loan Commitment and the Initial Incremental Term Loans. In accordance with Section 2.14 of the Credit Agreement, and subject to the satisfaction of the conditions set forth in Section 6 hereof, on and as of the First Amendment Effective Date, each Initial Incremental Term Lender hereby agrees that such Initial Incremental Term Lender (i) shall have, as contemplated by this Amendment and the Amended Credit Agreement, an Initial Incremental Term Loan Commitment under the Amended Credit Agreement in an amount equal to the amount set forth opposite such Initial Incremental Term Lender’s name under the heading “Initial Incremental USD Term Loan Commitments” or “Initial Incremental Euro Term Loan Commitments” on Schedule 2.01(a) to the Amended Credit Agreement, as applicable, and (ii) shall be deemed to be, and shall become, an “Initial Incremental Term Lender” (including an “Initial Incremental USD Term Lender” and/or “Initial Incremental Euro Term Lender”, as applicable), an “Additional Lender”, a “Term Lender”, a “Lender” and a “Secured Party” for all purposes of, and subject to all the obligations of an “Initial Incremental Term Lender”, an “Additional Lender”, a “Term Lender”, a “Lender” and a “Secured Party” under, the Amended Credit Agreement and the other Loan Documents. The Borrower and the
Administrative Agent hereby agree that from and after the First Amendment Effective Date, each Initial Incremental Term Lender shall be deemed to be, and shall become, an “Initial Incremental Term Lender” (including an “Initial Incremental USD Term Lender” and/or “Initial Incremental Euro Term Lender”, as applicable), an “Additional Lender”, a “Term Lender”, a “Lender” and a “Secured Party” for all purposes of, and with all the rights and remedies of an “Initial Incremental Term Lender” (including an “Initial Incremental USD Term Lender” and/or “Initial Incremental Euro Term Lender”, as applicable), an “Additional Lender”, a “Term Lender”, a “Lender” and a “Secured Party” under, the Amended Credit Agreement and the other Loan Documents.

(b) The Borrower hereby designates that the Initial Incremental Term Loans are being incurred in reliance on clauses (c)(A) and (c)(D)(x) of Section 2.14(4) in the Credit Agreement, and giving effect, for the avoidance of doubt, to Section 1.07(8).

(c) In accordance with Section 2.14 of the Credit Agreement, and subject to the satisfaction of the conditions set forth in Section 6 hereof, on and as of the First Amendment Effective Date, each Initial Incremental Term Lender party hereto hereby agrees that such Initial Incremental Term Lender shall make Initial Incremental Term Loans to the Borrower pursuant to Section 2.01(1)(c) or (d), as applicable, of the Amended Credit Agreement on the First Amendment Effective Date in a principal amount not to exceed its Initial Incremental Term Loan Commitment under the Amended Credit Agreement.

(d) The Initial Incremental USD Term Loans shall constitute a Term Loan Increase of the Closing Date USD Term Loans and shall be of the same Class as the Closing Date USD Term Loans. The Initial Incremental Euro Term Loans shall constitute a Term Loan Increase of the Closing Date Euro Term Loans and shall be of the same Class as the Closing Date Euro Term Loans. The terms, provisions and documentation of the Initial Incremental USD Term Loans shall be identical (other than with respect to upfront fees, OID or similar fees) (including call protection, interest rate margins and interest rate floors) to the Closing Date USD Term Loans as existing on the First Amendment Effective Date and are in compliance with Sections 2.14(5)(a) and (c) of the Credit Agreement. The terms, provisions and documentation of the Initial Incremental Euro Term Loans shall be identical (other than with respect to upfront fees, OID or similar fees) (including call protection, interest rate margins and interest rate floors) to the Closing Date Euro Term Loans as existing on the First Amendment Effective Date and are in compliance with Sections 2.14(5)(a) and (c) of the Credit Agreement. The parties hereto intend to treat the Initial Incremental USD Term Loans as fungible with the existing Closing Date USD Term Loans for U.S. federal income tax purposes. The parties hereto intend to treat the Initial Incremental Euro Term Loans as fungible with the existing Closing Date Euro Term Loans for U.S. federal income tax purposes.

(e) Each of the parties hereto hereby agrees that the Administrative Agent may, in accordance with Section 2.14(6) of the Credit Agreement, take any and all actions as may be reasonably necessary to ensure that all Initial Incremental Term Loans, when originally made, are Closing Date Term Loans for all purposes under the Credit Agreement and the other Loan Documents and are included in each Borrowing of outstanding Closing Date USD Term Loans or Closing Date Euro Term Loans, as applicable, on a pro rata basis. This may be accomplished by allocating a portion of each Initial Incremental Term Loan to each outstanding Eurocurrency Rate Loan or EURIBOR Rate Loan, as applicable, that is a Closing Date Term Loan on a pro rata basis, even though as a result thereof such Initial Incremental Term Loan may effectively have a shorter
Interest Period than the Closing Date Term Loans included in the Borrowing of which they are a part (and notwithstanding any other provision of the Credit Agreement that would prohibit such an initial Interest Period). The Initial Incremental Term Loans shall not accrue interest for any period prior to the First Amendment Effective Date and the Borrower shall not be required to pay interest on the Initial Incremental Term Loans pursuant to Section 2.08 of the Credit Agreement for any period prior to the First Amendment Effective Date.

(f) As of the First Amendment Effective Date, after giving effect to the making of the Initial Incremental Term Loans, (i) the aggregate principal amount of Closing Date USD Term Loans outstanding pursuant to the Amended Credit Agreement shall be $2,872,612,500.00 and (ii) the aggregate principal amount of Closing Date Euro Term Loans outstanding pursuant to the Amended Credit Agreement shall be €655,732,500.00.

SECTION 4. Assignment and Assumption Agreement. On and after the First Amendment Effective Date, the “Assignment and Assumption” (as defined in the Credit Agreement) shall be in a form separately agreed to by the Borrower, the Administrative Agent and the Initial Incremental Term Lenders in accordance with the terms of the Credit Agreement and in lieu of the Assignment and Assumption attached as Exhibit D-1 to the Credit Agreement.

SECTION 5. Reference to and Effect on the Loan Documents. On and after the First Amendment Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “thereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the “Credit Agreement”, shall mean and be a reference to the Amended Credit Agreement, and any reference to “Obligations” shall mean and be a reference to the “Obligations” under the Amended Credit Agreement.

(a) On and after the First Amendment Effective Date, the Credit Agreement, as specifically amended by this Amendment, and the other Loan Documents are, and shall continue to be, in full force and effect, and are hereby in all respects ratified and confirmed.

(b) From and after the First Amendment Effective Date, this Amendment shall be deemed an Incremental Amendment and a Loan Document for all purposes under the Amended Credit Agreement and the other Loan Documents.

(c) The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Credit Agreement and the other Loan Documents as in effect prior to the First Amendment Effective Date.

SECTION 6. Conditions of Effectiveness. The obligations of the Initial Incremental Term Lenders to make Initial Incremental Term Loans under the Amended Credit Agreement and the amendments to the Credit Agreement contained in Section 2 hereof shall become effective as of the first date (the “First Amendment Effective Date”) on which the following conditions shall have been satisfied (or waived by the Initial Incremental Term Lenders):
(a) The Administrative Agent and the Initial Incremental Term Lenders shall have received counterparts of (i) this Amendment executed by the Borrower, the Administrative Agent and the Initial Incremental Term Lenders and (ii) the Guarantor Consent and Reaffirmation attached hereto (the "Guarantor Consent") executed by each Guarantor;

(b) The Administrative Agent and the Initial Incremental Term Lenders shall have received a customary legal opinion from Ropes & Gray LLP, counsel to the Loan Parties;

(c) The Administrative Agent and the Initial Incremental Term Lenders shall have received, with respect to each Loan Party, certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such jurisdiction), customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party certifying true and complete copies of the Organizational Documents attached thereto and evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and the Guarantor Consent;

(d) The Administrative Agent and the Initial Incremental Term Lenders shall have received a certificate of a Responsible Officer of the Borrower certifying (i) that the conditions in clauses (f) and (g) of this Section 6 have been satisfied and (ii) the amount, if any, of Initial Incremental Term Loans being incurred in reliance on such clause (D)(x) of the definition of “Available Incremental Amount”;

(e) The Administrative Agent and the Initial Incremental Term Lenders shall have received a solvency certificate from a Financial Officer of Holdings or the Borrower (after giving effect to the transactions contemplated by this Amendment) based on and consistent with the form attached to the Credit Agreement as Exhibit I;

(f) The Specified Representations (which, for the purposes of this Section 6(f), shall include Skyhigh Networks, Inc. and its Restricted Subsidiaries, as applicable) shall be true and correct in all material respects on the First Amendment Effective Date (unless such Specified Representations relate to an earlier date, in which case, such Specified Representations shall have been true and correct in all material respects as of such earlier date); provided, that each reference to the “Closing Date” set forth in the Specified Representations shall, for purposes of this clause 6(f), be a reference to the First Amendment Effective Date;

(g) Immediately after giving effect to this Amendment, no Event of Default under Section 8.01(1) of the Credit Agreement or, solely with respect to the Borrower, Section 8.01(6) of the Credit Agreement, shall exist after giving effect to the making of the Initial Incremental Term Loans;

(h) The Administrative Agent and the Initial Incremental Term Lenders shall have received a Committed Loan Notice no later than 1:00 p.m. (New York time) at least three Business Days (in the case of Eurodollar Rate Loans or EURIBOR Rate Loans) prior to, or on (in the case of Base Rate Loans), as applicable, the requested date of the Borrowing in respect of the Initial Incremental Term Loans;
(i) The Borrower shall have paid all reasonable and documented out-of-pocket expenses of the Administrative Agent (including, without limitation, the Attorney Costs of the Administrative Agent to the extent provided for in Section 10.04 of the Credit Agreement) and the Initial Incremental Term Lenders in connection with this Amendment invoiced at least three (3) Business Days (unless otherwise reasonably agreed by the Borrower) prior to the First Amendment Effective Date;

(j) The Borrower shall have paid all fees required to be paid pursuant to the amended and restated fee letter, dated as of December 8, 2017, by and between the Borrower, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs Bank USA, UBS AG, Stamford Branch and UBS Securities LLC;

(k) The Administrative Agent shall have received at least two (2) Business Days prior to the First Amendment Effective Date all documentation and other information about the Borrower and the Guarantors (other than any Excluded Subsidiary) required under applicable “know your customer” and anti-money laundering rules and regulations (including the USA PATRIOT Act) that has been reasonably requested in writing at least ten (10) Business Days prior to the First Amendment Effective Date; and

(l) The Borrower shall have paid all accrued and unpaid interest on the Closing Date Term Loans up to, but excluding, the First Amendment Effective Date.

For purposes of determining compliance with the conditions specified in this Section 6, the Initial Incremental Term Lenders shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Initial Incremental Term Lenders from and after the making by the Initial Incremental Term Lenders of the Initial Incremental Term Loans pursuant to Section 2.01(1)(c) and (d) of the Amended Credit Agreement. The Initial Incremental Term Lenders and the Borrower shall promptly notify the Administrative Agent of the occurrence of the First Amendment Effective Date.

SECTION 7. Representations and Warranties. The Borrower hereby represents and warrants to the Administrative Agent and the Initial Incremental Term Lenders as of the First Amendment Effective Date that:

(a) The execution, delivery and performance by the Borrower of this Amendment and the execution, delivery and performance by each Guarantor of the Guarantor Consent has been duly authorized by all necessary corporate or other organizational action;

(b) None of the execution, delivery or performance by the Borrower of this Amendment or the execution, delivery or performance by any Guarantor of the Guarantor Consent will contravene the terms of any of the Borrower’s or any Guarantor’s Organizational Documents;

(c) This Amendment has been duly executed and delivered by the Borrower, and the Guarantor Consent has been duly executed and delivered by each Guarantor. This Amendment constitutes a legal, valid and binding obligation of the Borrower, and the Guarantor Consent constitutes a legal, valid and binding obligation of each Guarantor, enforceable against the Borrower and each Guarantor, as applicable, in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws, by general principles of equity and by principles of good faith and fair dealing; and
(d) Each Loan Party and each of its respective Restricted Subsidiaries that is a Material Subsidiary is a Person duly organized or formed, 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).

SECTION 8. Costs and Expenses. The Borrower agrees to pay (a) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent (including the Attorney Costs of the Administrative Agent to the extent provided for in Section 10.04 of the Credit Agreement) in connection with the preparation, execution and delivery of this Amendment and any other instruments and documents to be delivered hereunder or in connection herewith, including all Attorney Costs of a single U.S. counsel to the Administrative Agent and (b) all reasonable and documented out-of-pocket expenses incurred by the Initial Incremental Term Lenders to the extent separately agreed among the Initial Incremental Term Lenders and the Borrower on or prior to the date hereof.

SECTION 9. Execution in Counterparts; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Amendment. Except as provided in Section 6, this Amendment shall become effective when it shall have been executed by the Borrower, the Administrative Agent and the Initial Incremental Term Lenders.

SECTION 10. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Clauses (b) and (c) of Section 10.16 of the Credit Agreement are incorporated herein by reference, mutatis mutandis.

SECTION 11. WAIVER OF RIGHT OF TRIAL BY JURY. EACH PARTY TO THIS AMENDMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective authorized officers as of the date first above written.

MCAFEE, LLC

By: /s/ Michael Berry
Name: Michael Berry
Title: Chief Financial Officer

[Signature Page to Amendment No. 1 to First Lien Credit Agreement]
MORGAN STANLEY SENIOR FUNDING, INC., as Administrative Agent

By: /s/ Lisa Hanson
Name: Lisa Hanson
Title: VP

[Signature Page to Amendment No. 1 to First Lien Credit Agreement]
BANK OF AMERICA, N.A.,
as an Incremental USD Term Lender,
an Initial Incremental USD Term Lender,
an Incremental Euro Term Lender,
and an Initial Incremental Euro Term Lender

By: /s/ Michael Roane
Name: Michael Roane
Title: Vice President

[Signature Page to Amendment No. 1 to First Lien Credit Agreement]
Each of the undersigned, as a Guarantor under the First Lien Guaranty, dated as of September 29, 2017 (the “Guaranty”), in favor of the Administrative Agent and the Lenders parties to the Credit Agreement referred to in the foregoing Amendment, hereby consents to such Amendment and the transactions contemplated by such Amendment and, as of the First Amendment Effective Date, hereby, (a) ratifies, acknowledges and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party, in each case, as amended and in effect after giving effect to the Amendment and the making of the Initial Incremental Term Loans and agrees that its Guaranty remains in full force and effect to the extent set forth in such Guaranty and after giving effect to this Amendment and the incurrence of the Initial Incremental Term Loans, (b) ratifies, acknowledges and reaffirms each grant of a lien on, or security interest or pledge in, its Collateral made pursuant to the Loan Documents, in each case, as amended by the Amendment, and confirms that such liens and security interests continue to secure the Obligations in effect after giving effect to the Amendment and the making of the Initial Incremental Term Loans, in each case subject to the terms of the Amendment and the Amended Credit Agreement, and (c) confirms that the obligations of the Loan Parties with respect to the Initial Incremental Term Loans shall constitute, from and after the making of the Initial Incremental Term Loans, Obligations, Guaranteed Obligations (as defined in the Guaranty), Secured Obligations (as defined in the Security Agreement) and First Lien Credit Agreement Obligations and Senior Obligations (each as defined in the First Lien/Second Lien Intercreditor Agreement) and agrees that the security interests in connection therewith remain in full force and effect. Capitalized terms not otherwise defined in this Guarantor Consent have the same meanings as specified in the foregoing Amendment or the Amended Credit Agreement, as applicable.

[The remainder of this page is intentionally left blank]
GUARANTORS:

MCAFEE FINANCE 2, LLC

By: /s/ Michael Berry
Name: Michael Berry
Title: Vice President

MCAFEE EMPLOYEE HOLDINGS, LLC

By: /s/ Michael Berry
Name: Michael Berry
Title: Vice President

MCAFEE EXECUTIVE HOLDINGS, INC.

By: /s/ Michael Berry
Name: Michael Berry
Title: Vice President

MCAFEE PUBLIC SECTOR LLC

By: /s/ Michael Berry
Name: Michael Berry
Title: Vice President

[Signature Page to First Lien Guarantor Consent and Reaffirmation]
SECOND LIEN CREDIT AGREEMENT

Dated as of September 29, 2017

among

MCAFEE, LLC,
as the Borrower,

MCAFEE FINANCE 2, LLC,
as Holdings,

JPMORGAN CHASE BANK N.A.,
as Administrative Agent and Collateral Agent,

and

THE OTHER LENDERS PARTY HERETO

JPMorgan Chase Bank N.A.,
Morgan Stanley Senior Funding, Inc.,
Goldman Sachs Bank USA,
Merrill Lynch, Pierce, Fenner & Smith Incorporated,
Barclays Bank PLC,
Citigroup Global Markets Inc.,
Deutsche Bank Securities Inc.,
RBC Capital Markets¹,
UBS Securities LLC, and
Mizuho Bank, Ltd.,
as Joint Lead Arrangers and Joint Lead Bookrunners

¹ RBC Capital Markets is a brand name for the capital markets businesses of Royal Bank of Canada and its affiliates.
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This SECOND LIEN CREDIT AGREEMENT (this “Agreement”) is entered into as of September 29, 2017 by and among McAfee, LLC, a Delaware limited liability company (the “Borrower”), McAfee Finance 2, LLC, a Delaware limited liability company, as Holdings, JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, including any successor thereto, the “Administrative Agent”) under the Loan Documents and as collateral agent (in such capacity, including any successor thereto, the “Collateral Agent”) under the Loan Documents, and each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”).

PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders extend credit to the Borrower in the form of $600.0 million of Initial Loans on the Closing Date as second lien secured credit facilities.

On the Closing Date, the Borrower will enter into the First Lien Credit Agreement pursuant to which the Borrower will obtain (x) $3,150.0 million Dollar-equivalent in initial aggregate principal amount of first lien term loans denominated in Dollars and Euros and (y) $500.0 million of revolving credit commitments on the Closing Date as first lien secured facilities.

The proceeds of the Initial Loans and the First Lien Initial Loans and cash on hand, will be used on the Closing Date to fund the Transactions.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

Article I

Definitions and Accounting Terms

SECTION 1.01 Defined Terms. As used in this Agreement (including the introductory paragraph hereof and the preliminary statements hereto), the following terms have the meanings set forth below:

“Acceptable Discount” has the meaning specified in Section 2.05(1)(e)(D)(2).

“Acceptable Prepayment Amount” has the meaning specified in Section 2.05(1)(e)(D)(3).

“Acceptance and Prepayment Notice” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit M.

“Acceptance Date” has the meaning specified in Section 2.05(1)(e)(D)(2).

“Acquired Indebtedness” means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and
(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Additional Lender” means, at any time, any bank, other financial institution or institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Loan in accordance with Section 2.14, (b) Other Loans pursuant to a Refinancing Amendment in accordance with Section 2.15 or (c) Replacement Loans pursuant to Section 10.01; provided that each Additional Lender shall be subject to the approval of the Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed, in each case solely to the extent that any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B) for an assignment of Loans to such Additional Lender.

“Administrative Agent” has the meaning specified in the introductory paragraph to this Agreement.

“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 the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Affiliate Transaction” has the meaning specified in Section 7.07.

“Affiliated Lender” means, at any time, any Lender that is an Investor or an Affiliate of an Investor (other than (a) Holdings, the Borrower or any Subsidiary, (b) any Debt Fund Affiliate or (c) any natural person) at such time.

“Affiliated Lender Assignment and Assumption” has the meaning specified in Section 10.07(h)(vi).

“Affiliated Lender Cap” has the meaning specified in Section 10.07(h)(iv).

“Agent Parties” has the meaning specified in Section 10.02(4).

“Agent-Related Distress Event” means, with respect to the Administrative Agent or any other Person that directly or indirectly controls the Administrative Agent (each, a “Distressed Agent”), (a) that such Distressed Agent is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Agent or any substantial part of such Distressed Agent’s assets, or (c) such Distressed Agent is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated
as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent or its assets to be, insolvent or bankrupt; provided that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly controls the Administrative Agent by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide the Administrative Agent with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit the Administrative Agent (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with the Administrative Agent.

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

“Agents” means, collectively, the Administrative Agent, the Collateral Agent and the Supplemental Administrative Agents (if any).

“Agreement” means this Credit Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

“AHYDO Payment” means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an “applicable high yield discount obligation” within the meaning of Section 163(i) of the Code.

“All-In Yield” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurodollar Rate floor or Base Rate floor (with such increased amount being determined in the manner described in the final proviso of this definition), or otherwise, in each case, incurred or payable by the Borrower ratably to all lenders of such Indebtedness; provided that OID and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); provided, further, that “All-In Yield” shall not include arrangement fees, structuring fees, commitment fees, underwriting fees, success fees, advisory fees, ticking fees, consent or amendment fees and any similar fees (regardless of how such fees are computed and whether shared or paid, in whole or in part, with or to any or all lenders) and any other fees not generally paid ratably to all lenders of such Indebtedness; provided further that, with respect to any Loans of an applicable Class that includes a Eurodollar Rate floor or Base Rate floor, (1) to the extent that the Reference Rate on the date that the All-In Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the Applicable Rate for such Loans of such Class for the purpose of calculating the All-In Yield and (2) to the extent that the Reference Rate on the date that the All-In Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the All-In Yield.

“Applicable Discount” has the meaning specified in Section 2.05(1)(e)(C)(2).
“Applicable Rate” means, with respect to Initial Loans, (i) 8.50% for Eurodollar Rate Loans and (ii) 7.50% for Base Rate Loans.

“Appropriate Lender” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

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


“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions of property or assets of the Borrower or any Restricted Subsidiary (each referred to in this definition as a “disposition”); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.02 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable Law) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets, any disposition of inventory or goods (or other assets) held for sale and property or assets no longer used or useful in the ordinary course,

(iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower),

(iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and

(v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Borrower and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the disposition of all or substantially all of the assets of the Borrower in a manner permitted pursuant to Section 7.03;
(c) any disposition in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted Investment or any acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than $50.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to a Restricted Subsidiary;

(f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;

(h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary;

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets;

(j) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility, sales of receivables in connection with Receivables Financing Transactions or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date, including asset securitizations permitted hereunder;

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof;

(m) the licensing or sublicensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;
(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 7.01;

(s) the issuance of directors’ qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are (x) not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (y) non-core assets or surplus or unnecessary to the business or operations of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property;

(v) dispositions of property in connection with any Sale-Leaseback Transaction;

(w) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction;

(x) the sales of property or assets for an aggregate fair market value since the date of this Agreement not to exceed the greater of $193.75 million and 25.0% of Consolidated EBITDA of the Borrower for the most recently ended Test Period (calculated on a pro forma basis) determined at the time of the making of such disposition; and

(y) the sales of property or assets for an aggregate fair market value not to exceed $75.0 million in any calendar year with unused amounts in any calendar year being carried over to successive calendar years.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.

“Attorney Costs” means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel, to the extent documented in reasonable detail and invoiced.

“Attributable Indebtedness” means, on any date, in respect of any Capitalized Lease Obligation of any Person, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP.
“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor engaged by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Loan Prepayment pursuant to Section 2.05(1)(e); provided that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); provided further that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“Available Incremental Amount” has the meaning specified in Section 2.14(4)(c).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” has the meaning specified in Section 8.02.

“Base Rate” means for any day a fluctuating rate per annum (subject solely in the case of the Closing Date Term Facility to a floor of 2.00% per annum) equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as announced from time to time by the Administrative Agent as its “prime rate” and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day). The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Article III hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

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

“Basket” means any amount, threshold, exception or value (including by reference to the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, Consolidated EBITDA or Total Assets) permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction, action, judgment or amount under any provision in this Agreement or any other Loan Document.

“Big Boy Letter” means a letter from a Lender acknowledging that (1) an assignee may have information regarding Holdings, the Borrower and any Subsidiary of the Borrower, their ability to perform the Obligations or any other material information that has not previously been disclosed to the Administrative Agent and the Lenders (“Excluded Information”), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Loans to such assignee pursuant to Section 10.07(h) or (l) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such assignee, Holdings, the Borrower and the Subsidiaries of the Borrower with respect to the nondisclosure of the Excluded Information; or otherwise in form and substance reasonably satisfactory to such assignee, the Administrative Agent and assigning Lender.
“Board of Directors” means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “Board of Directors” means the Board of Directors of the Borrower.

“Borrower” has the meaning specified in the introductory paragraph to this Agreement.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower Offer of Specified Discount Prepayment” means any offer by any Borrower Party to make a voluntary prepayment of Loans at a specified discount to par pursuant to Section 2.05(1)(e)(B).

“Borrower Parties” means the collective reference to Holdings, the Borrower and each Subsidiary of the Borrower and “Borrower Party” means any of them.

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by any Borrower Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(1)(e)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by any Borrower Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(1)(e)(D).

“Borrowing” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Rate Loans, having the same Interest Period.

“Broker-Dealer Regulated Subsidiary” means any Subsidiary of the Borrower that is registered as a broker-dealer under the Exchange Act or any other applicable Laws requiring such registration.

“Business Day” means any day that is not a Legal Holiday and, with respect to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, any day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“Canadian Dollars” means the lawful currency of Canada.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Lease Obligations) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Restricted Subsidiaries.
“Capital Stock” means:

1. in the case of a corporation, corporate stock or shares in the capital of such corporation;
2. in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
3. in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
4. any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP in accordance with Section 1.03.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

“Captive Insurance Subsidiary” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“Cash Collateral Account” means an account held in the name of a Loan Party at, and subject to the sole dominion and control of, the Collateral Agent (or until the First Lien Credit Agreement Termination Date, the First Lien Administrative Agent).

“Cash Equivalents” means:

1. Dollars;
2. (a) Euros, Yen, Canadian Dollars, Sterling or any national currency of any participating member state of the EMU;
   (b) in the case of any Foreign Subsidiary or any jurisdiction in which the Borrower or any Restricted Subsidiary conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;
3. readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;
(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of “A” or higher from S&P or “A2” or higher from Moody’s (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.
In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, provided that such amounts, except amounts used to pay non-Dollar denominated obligations of the Borrower or any Restricted Subsidiary in the ordinary course of business, are expected by the Borrower to be converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts (and solely to the extent so converted on or prior to such tenth (10th) Business Day).

“Cash Management Agreement” means any agreement entered into from time to time by Holdings, the Borrower or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

“Cash Management Bank” means any Person that is an Agent, a Lender or an Affiliate of an Agent or Lender on the Closing Date or at the time it entered into a Secured Cash Management Agreement, whether or not such Person subsequently ceases to be an Agent, a Lender or an Affiliate of an Agent or Lender.

“Cash Management Obligations” means obligations owed by Holdings, the Borrower or any Restricted Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

“Cash Management Services” means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives
promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the
United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to
the Closing Date.

“Change of Control” means the occurrence of any of the following after the Closing Date:

(1) at any time prior to the consummation of the first public offering of the Borrower’s common equity or the common equity of any Parent
Company after the Closing Date, the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange
Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding
Equity Interests of the Borrower; or

(2) at any time following the consummation of the first public offering of the Borrower’s common equity or the common equity of any
Parent Company after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders)
constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the “beneficial owner” (as defined in
Rules 13(d)-3 and 13(d)-5 under the Exchange Act) (excluding any employee benefit plan of such Person and its subsidiaries, and any Person
acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), directly or indirectly, of Equity Interests of the
Borrower representing more than forty percent (40%) of the aggregate ordinary voting power represented by the issued and outstanding Equity
Interests of the Borrower and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary
voting power represented by the Equity Interests of the Borrower beneficially owned, directly or indirectly, in the aggregate by the Permitted
Holders (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder,
Equity Interests held by any Permitted Holder will be excluded);

(3) any “Change of Control” (or any comparable term) in any document pertaining to the First Lien Credit Facilities or any Refinancing
Indebtedness thereof, in each case with an aggregate outstanding principal amount in excess of the Threshold Amount; or

(4) the Borrower ceases to be directly or indirectly wholly owned by Holdings (or any successor or Parent Company that has become a
Guarantor in lieu of Holdings);

unless, in the case of clause (1) or (2) above, the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power,
contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower.

“Charge” means any charge, fee, expense, expenditure, cost, loss, accrual, reserve of any kind and any other deduction included in the
calculation of Consolidated Net Income.

“Class” (a) when used with respect to Lenders, refers to whether such Lenders have Loans or Commitments with respect to a particular
Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Closing Date Commitments,
Incremental Commitments, Commitments in respect of any Class of Replacement Loans or Other Commitments of a given Class of Other Loans, in
each case not designated part of another existing Class and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the
Loans
comprising such Borrowing, are Initial Loans, Incremental Loans, Replacement Loans, Extended Loans or Other Loans, in each case not designated part of another existing Class. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have identical terms and conditions shall be construed to be in the same Class.

“Closing Date” means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, and the Initial Loans are made to the Borrower pursuant to Section 2.01(1), which date was September 29, 2017.

“Closing Date Commitment” means, as to each Lender, its obligation to make an Initial Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Lender’s name on Schedule 2.01 under the caption “Closing Date Commitment” or in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption) pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Sections 2.14, 2.15 or 2.16). The initial aggregate amount of the Closing Date Commitments is $600.0 million.


“Collateral” means all the “Collateral” (or equivalent term) as defined in any Collateral Document and the Mortgaged Properties, if any.

“Collateral Agent” has the meaning specified in the introductory paragraph to this Agreement.

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

(1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(1)(c) or (b) pursuant to the Security Agreement or Sections 6.11 or 6.13 at such time required by the Security Agreement or by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) all Obligations shall have been unconditionally guaranteed by (a) Holdings (or any successor thereto), (b) each Restricted Subsidiary of the Borrower that is a wholly owned Material Subsidiary (other than any Excluded Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(1) hereto and (c) any Restricted Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) (i) the First Lien Loans (or any Refinancing Indebtedness in respect thereof having an aggregate principal amount in excess of the Threshold Amount), (ii) any Junior Indebtedness, (iii) any Permitted Incremental Equivalent Debt or (iv) any Credit Agreement Refinancing Indebtedness (the Persons in the preceding clauses (a) through (c) collectively, the “Guarantors”);

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject only to Liens permitted by Section 7.01, in

(a) all the Equity Interests of the Borrower,
(b) all Equity Interests of each direct, wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) that is
directly owned by any Loan Party and

c) 65% of the issued and outstanding Equity Interests of each class of each (i) wholly owned Material Domestic Subsidiary that is
(a) a Foreign Subsidiary Holdco and (b) directly owned by a Loan Party and (ii) wholly owned Material Foreign Subsidiary, in each case,
that is directly owned by a Loan Party (in each case, to the extent such Material Domestic Subsidiary or Material Foreign Subsidiary is not
an Excluded Subsidiary (other than by virtue of being a Foreign Subsidiary Holdco or Foreign Subsidiary, as applicable));

(4) except to the extent otherwise provided hereunder or under any Collateral Document, including subject to Liens permitted by
Section 7.01, and in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents, the
Obligations and the Guaranty shall have been secured by a security interest in substantially all tangible and intangible personal property of the
Borrower and each Guarantor (including accounts other than Securitization Assets), inventory, equipment, investment property, contract rights,
applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing (in each
case, other than Excluded Assets), in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by

(i) delivering certificated securities and instruments, in which a security interest can be perfected by physical control, in each
case to the extent expressly required hereunder or the Security Agreement (solely in respect of any promissory note in excess of
$25.0 million, Indebtedness of any Restricted Subsidiary that is not a Guarantor that is owing to any Loan Party (which may be
evidenced by the Intercompany Note and pledged to the Collateral Agent) and certificated Equity Interests of the wholly owned
Restricted Subsidiaries that are Material Subsidiaries otherwise required to be pledged pursuant to the Collateral Documents to the
extent required under clause (3) above),

(ii) filing financing statements under the Uniform Commercial Code of any applicable jurisdiction,

(iii) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or

(iv) filings in the applicable real estate records with respect to Mortgaged Properties (or any fixtures related to Mortgaged
Properties) to the extent required by the Collateral Documents and

(b) with the priority required by the Collateral Documents; provided that any such security interests in the Collateral shall be subject
to the terms of the Intercreditor Agreements to the extent expressly required by this Agreement; and
subject to the exceptions and limitations set forth in this Agreement, the Collateral Agent shall have received counterparts of a Mortgage, together with the other deliverables described in Section 6.11(2)(b), with respect to each Material Real Property listed on Schedule 1.01(2) to the extent required to be delivered pursuant to Section 6.11 or Section 6.13 (the “Mortgaged Properties”) duly executed and delivered by the record owner of such property within the time periods set forth in said Sections; provided that (i) to the extent any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes, intangibles tax, documentary tax or similar recording fees or taxes, the relevant Mortgage shall not secure an amount in excess of the fair market value of the Mortgaged Property subject thereto and (ii) no flood insurance or compliance with any flood insurance laws shall be required with respect to any Mortgaged Property.

The foregoing definition shall not require, and the Loan Documents shall not contain any requirements as to, the creation, perfection or maintenance of pledges of, or security interests in, Mortgages on, or the obtaining of Mortgage Policies, surveys, abstracts or appraisals or taking other actions with respect to, any Excluded Assets.

The Collateral Agent may grant extensions of time for the creation, perfection or maintenance of security interests in, or the execution or delivery of any Mortgage and the obtaining of title insurance, surveys or Opinions of Counsel with respect to, particular assets (including extensions beyond the Closing Date for the creation, perfection or maintenance of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation, perfection or maintenance 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.

No actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect or make enforceable such security interests in any assets (including any intellectual property registered or applied for in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No perfection through control agreements or perfection by “control” shall be required with respect to any assets (other than to the extent required under clause (4)(a)(i) above). There shall be no (x) Guaranties governed under the laws of any non-U.S. jurisdiction, (y) requirement to obtain any landlord waivers, estoppels or collateral access letters or (z) requirement to perfect a security interest in any letter of credit rights, other than by the filing of a UCC financing statement.

It is understood and agreed that prior to the Discharge of Senior Obligations, to the extent the First Lien Administrative Agent is satisfied with or agrees to any deliveries of or other arrangements with respect to any Collateral, the Administrative Agent and the Collateral Agent, as the case may be, shall be deemed to be satisfied with such arrangements. So long as the First Lien/Second Lien Intercreditor Agreement is in effect, (A) a Loan Party may satisfy its obligations to deliver or make arrangements with respect to any Collateral to the Collateral Agent by delivering to, or making arrangements with respect to such Collateral satisfactory to (x) prior to the Discharge of Senior Obligations, the Designated Senior Representative (as defined in the First Lien/Second Lien Intercreditor Agreement) or its agent, designee or bailee, and (y) after the Discharge of Senior Obligations, the Designated Second Priority Representative (as defined in the First Lien/Second Lien Intercreditor Agreement), in each case in accordance with the terms of the First Lien/Second Lien Intercreditor Agreement and (B) prior to the Discharge of Senior Obligations, if the First Lien Administrative Agent grants an extension of time pursuant to a provision in the First Lien Credit Documents that is substantially similar to the second preceding paragraph of this definition or exercises its discretion under the First Lien Credit Documents to determine that any Subsidiary of Holdings shall be excluded from the requirements of the “Collateral and Guarantee Requirement” or that any property shall be an “Excluded Asset” (in each case as defined in the First Lien Credit Agreement), the Administrative Agent and the Collateral Agent, as the case may be, shall automatically be deemed to accept such determination hereunder and shall execute any documentation, if applicable, in connection therewith.
“Collateral Documents” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(c), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“Commitment” means, as to each Lender, its obligation to make a Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Loan to be made by such Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment, (iv) an Extension Amendment or (v) an amendment in respect of Replacement Loans. The initial amount of each Lender’s Commitment is specified on Schedule 2.01 under the caption “Closing Date Commitment” or, otherwise, in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption), Incremental Amendment, Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans pursuant to which such Lender shall have assumed its Commitment, as the case may be.

“Committed Loan Notice” means a notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of Eurodollar Rate Loans of a given Class, pursuant to Section 2.02(1), which, if in writing, shall be substantially in the form of Exhibit A, or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer of the Borrower.

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

“Compensation Period” has the meaning specified in Section 2.12(3)(b).

“Compliance Certificate” means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower:

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)), and

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of (i) Excess Cash Flow for each fiscal year commencing with the financial statements for the fiscal year ending on or about December 29, 2018 and (ii) the Net Proceeds received during the applicable period (after the Closing Date in the case of the fiscal year ending on or about December 30, 2017) by or on behalf of the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i) and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii).
“Consolidated Current Assets” means, as at any date of determination, the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees, derivative financial instruments and any assets in respect of Hedge Agreements, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

“Consolidated Current Liabilities” means, as at any date of determination, the total liabilities of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) revolving loans and letter of credit obligations under the First Lien Credit Facilities or any other revolving credit facility, (F) the current portion of any Capitalized Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs, (K) any liabilities in respect of Hedge Agreements and (L) deferred revenue, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

“Consolidated Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h), (l), (q) and (r)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers’ acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of “Consolidated Interest Expense” pursuant to the definition thereof; plus

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or other levies that replace or are intended to be in lieu of taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of “Consolidated Net Income,” and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; plus
(c) Consolidated Depreciation and Amortization Expense for such period; plus

(d) any other non-cash Charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower in its sole discretion may determine not to add back such non-cash Charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash Charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); plus

(e) Charges consisting of income attributable to minority interests and non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, Consolidation; plus

(f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including transaction and termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreement or otherwise to the extent permitted under Section 7.07 and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; plus

(g) Charges, including any loss or discount, related to the sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; plus

(h) cash receipts (or any netting arrangements resulting in reduced cash Charges) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; plus

(i) any Charges pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); plus
(j) any net pension or other post-employment benefit Charges representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification Topic 715—Compensation—Retirement Benefits, and any other items of a similar nature, plus

(k) the amount of earnout obligation expense incurred in connection with (including adjustments thereto) any acquisitions and Investments, whether consummated prior to or after the Closing Date; plus

(l) the amount of “run rate” cost savings, synergies and operating expense reductions (and revenue enhancements in the case of price increases instituted prior to the Closing Date) related to restructurings, cost savings initiatives, operational changes or other initiatives or recommended (in reasonable detail) by any quality of earnings or similar diligence report made available to the Administrative Agent conducted by financial advisors (which financial advisors are nationally recognized or reasonably acceptable to the Administrative Agent (it being understood and agreed that any of the “Big Four” accounting firms are acceptable) that are projected by the Borrower in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within 18 months after the end of such period (which cost savings, synergies and operating expense reductions (and revenue enhancements) shall be calculated on a pro forma basis as though such cost savings, synergies and operating expense reductions (and revenue enhancements) had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that “run rate” means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) pro forma cost savings, synergies or operating expense reduction adjustments made pursuant to Section 1.07); provided that such cost savings, synergies and operating expenses are reasonably identifiable and factually supportable; provided, that the aggregate amount of any such “run rate” adjustments added back pursuant to this clause (l) and Section 1.07 shall not exceed in the aggregate 25% of Consolidated EBITDA for such period (as calculated before giving effect to any such “run rate” adjustments), plus

(m) for periods occurring prior to the Closing Date, any corporate allocations made to Borrower or any of its Restricted Subsidiaries in excess of the costs incurred by the McAfee Business on a standalone basis; plus

(n) any payments in the nature of compensation or expense reimbursement made to independent board members; plus

(o) (i) for periods occurring prior to the Closing Date, internal software development costs expensed during the period and (ii) for periods occurring after the Closing Date, internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; plus

(p) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are being held for sale or are subject to an agreement to dispose of such operations, if selected by the Borrower in its sole discretion, only when and to the extent such operations are actually disposed of); plus
(q) adjustments, exclusions and add-backs consistent with Regulation S-X of the SEC; plus

(r) without duplication of revenues recognized in any other period, the net amount, if any, of the difference between (to the extent the amount in the following clause (i) exceeds the amount in the following clause (ii)): (i) the deferred revenue of such Person and its Restricted Subsidiaries as of the last day of such period (the “Determination Date”) and (ii) the deferred revenue of such Person and its Restricted Subsidiaries as of the date that is 12 months prior to the Determination Date, in each case, calculated without giving effect to adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition),

(b) the amount of any income consisting of losses attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period, and

(c) any net income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are being held for sale or are subject to an agreement to dispose of such operations, if selected by the Borrower in its sole discretion, only when and to the extent such operations are actually disposed of).

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended on October 1, 2016, December 31, 2016, April 1, 2017 and July 1, 2017, Consolidated EBITDA for such fiscal quarters shall be $161.021 million, $257.868 million, $175.604 million and $170.962 million, respectively (the “Deemed EBITDA Numbers”), in each case, as may be subject to add-backs and adjustments (without duplication and other than add-backs and adjustments related to the Transactions) pursuant to the definition of “Consolidated EBITDA” and appropriate exclusions in the definition of “Consolidated Net Income” (for the avoidance of doubt, without duplication of add-backs, adjustments and exclusions already incorporated in arriving at such Deemed EBITDA Numbers) and Section 1.07 for the applicable Test Period. For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.07.

“Consolidated First Lien Secured Debt” means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet on a consolidated basis in accordance with GAAP, consisting only of (i) Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a first priority lien on the Collateral on a pari passu basis with the First Lien Initial Term Loans and (ii) other Capitalized Lease Obligations and purchase money Indebtedness of the Loan Parties in excess of the Threshold Amount and secured by a first priority lien;
provided, Consolidated First Lien Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“Consolidated Interest Expense” means, with respect to any Person for any period, without duplication, the cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof);

excluding, in each case:

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (2)(a) and (2)(b) above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815, Derivatives and Hedging,

(iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness,

(v) “additional interest” owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) interest expense attributable to a Parent Company resulting from push-down accounting,

(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting.
(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto in connection with the Transactions, any acquisition or Investment and

(xii) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness (including any security or collateral trust arrangements related thereto), including the Facilities and the First Lien Credit Facilities.

For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, one-time, non-recurring or unusual gains or Charges (including relating to any strategic initiatives and accruals and reserves in connection with such gains or Charges and including legal fees, expenses, settlements and judgments) and special items; restructuring Charges; accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); Charges related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; exit, separation, transition and start-up stand-alone Charges associated with the separation of the McAfee Business from Intel Corporation; Excluded TPG/Intel Costs; Public Company Costs; Charges related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses; special compensation Charges, consulting fees; signing, retention or completion bonuses and charges, and executive recruiting costs; Charges incurred in connection with strategic initiatives; transition Charges and duplicative running and operating Charges; Charges in connection with non-ordinary course product and intellectual property development; Charges incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization Charges (including Charges relating to business optimization programs, new systems design, Charges related to systems establishment, implementation, integration and upgrades and project start-up); accruals and reserves; Charges attributable to the implementation of cost-savings initiatives and operating improvements and consolidations; curtailments and modifications to pension and post-employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);
(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary and, solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; provided that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period;

(6) solely for the purpose of determining Excess Cash Flow and the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); provided that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment Charges or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, Compensation—Stock Compensation or Accounting Standards Codification Topic 505-50, Equity-Based Payments to Non-Employees, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any Charges during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the syndication and incurrence of any Indebtedness, including the First Lien Credit Facilities and any Facilities hereunder),
issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of any Indebtedness, including the First Lien Credit Documents and the Loan Documents) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, Business Combinations);

(12) accruals and reserves that are established or adjusted in connection with the Transactions, an Investment or an acquisition that are required to be established or adjusted as a result of the Transactions, such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—Financial Instruments;

(15) any net realized or unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, Guarantees, or any comparable regulation;

(17) any non-cash rent expense;

(18) [reserved];

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.
Notwithstanding the foregoing, for the purpose of Section 7.05(a) (other than clause (3)(d) of Section 7.05(a)), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of Section 7.05(a).

“Consolidated Secured Debt” means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet on a consolidated basis in accordance with GAAP, consisting only of (i) Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien on the Collateral and (ii) other Capitalized Lease Obligations and purchase money Indebtedness of the Loan Parties in excess of the Threshold Amount and secured by a lien; provided, Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“Consolidated Total Debt” means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; provided, Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“Consolidated Working Capital” means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:
(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) 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; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Contract Consideration” has the meaning specified in clause (2)(k) of the definition of “Excess Cash Flow.”

“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.

“Controlled Investment Affiliate” means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

“Convertible Indebtedness” means Indebtedness of the Borrower (which may be guaranteed by the Guarantors) permitted to be incurred hereunder that is either (a) convertible into common equity of the Borrower (and cash in lieu of fractional shares) or cash (in an amount determined by reference to the price of such common equity) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common equity of the Borrower or cash (in an amount determined by reference to the price of such common equity).

“Corrective Extension Amendment” has the meaning specified in Section 2.16(6).

“Credit Agreement Refinanced Debt” has the meaning assigned to such term in the definition of “Credit Agreement Refinancing Indebtedness.”

“Credit Agreement Refinancing Indebtedness” means (a) Permitted Equal Priority Refinancing Debt, (b) Permitted Junior Priority Refinancing Debt or (c) Permitted Unsecured Refinancing Debt; provided that, in each case, such Indebtedness is issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) to Refinance, in whole or in part, existing Loans (or, if applicable, unused Commitments) or any then-existing Credit Agreement Refinancing Indebtedness (“Credit Agreement Refinanced Debt”); provided, further, that (i) the terms of any such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith) or (B) if otherwise not consistent with the terms of such Credit Agreement Refinanced Debt, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Credit Agreement Refinanced Debt, except
with respect to covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such Refinancing, (ii) any such Indebtedness shall have a maturity date that is no earlier than the Credit Agreement Refinanced Debt and a Weighted Average Life to Maturity equal to or greater than that of the Credit Agreement Refinanced Debt as of the date of determination, (iii) such Indebtedness shall not have a greater principal amount (or shall not have a greater accreted value, if applicable) than the principal amount (or accreted value, if applicable) of the Credit Agreement Refinanced Debt plus accrued interest, fees and premiums (including tender premium) and penalties (if any) thereon and fees, expenses, original issue discount and upfront fees incurred in connection with such Refinancing plus the amount of any other Indebtedness permitted under one or more other Baskets under Section 7.02 (which shall be deemed a utilization of any such Baskets), (iv) such Credit Agreement Refinanced Debt shall be repaid, defeased or satisfied and discharged, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, within five (5) Business Days after the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained with the Net Proceeds received from the incurrence or issuance of such Indebtedness and (v) any mandatory prepayments of (I) any Permitted Junior Priority Refinancing Debt may not be made except to the extent that prepayments are not prohibited hereunder and to the extent required hereunder or pursuant to the terms of any Permitted Equal Priority Refinancing Debt, first made or offered to the holders of the Loans constituting Second Lien Obligations and any such Permitted Equal Priority Refinancing Debt, and (II) any Permitted Equal Priority Refinancing Debt in respect of events described in Section 2.05(2)(a), (b) and (d)(i), may be made on a pro rata basis, less than a pro rata basis or greater than a pro rata basis (but not greater than a pro rata basis as compared to any Class of Loans constituting Second Lien Obligations with an earlier maturity date unless the Credit Agreement Refinanced Debt was so entitled to participate on a greater than a pro rata basis) with each Class of Loans constituting Second Lien Obligations under Section 2.05(2)(a), (b) and (d)(i), provided, further, that “Credit Agreement Refinancing Indebtedness” may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with (or which converts into or is exchanged for) long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (ii) of the second proviso in this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (ii) above) and in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other interim credit facility, clause (v) of the preceding proviso in this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

“Debt Fund Affiliate” means any Affiliate of an Investor that is a bona fide diversified debt fund that is not (a) a natural person or (b) Holdings, the Borrower or any Subsidiary of the Borrower.

“Debt Representative” means, with respect to any series of Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent or representative under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning specified in Section 2.05(2)(g).

“Default” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.
“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate applicable to Base Rate Loans plus (c) 2.00% per annum; provided that with respect to the outstanding principal amount of any Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(3)) plus 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Borrower, any Restricted Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of Section 7.05(a).

“Designated Revolving Commitments” means any commitments to make loans or extend credit on a revolving basis (or delayed draw basis) to the Borrower or any Restricted Subsidiary by any Person other than the Borrower or any Restricted Subsidiary that have been designated in an Officer’s Certificate delivered to the Administrative Agent as “Designated Revolving Commitments” until such time as the Borrower subsequently delivers an Officer’s Certificate to the Administrative Agent to the effect that such commitments will no longer constitute “Designated Revolving Commitments”; provided that, during such time (including at the time of the incurrence of such Designated Revolving Commitments), (i) such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Interest Coverage Ratio, Total Net Leverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the availability of any Baskets hereunder and (ii) commencing on the date such Designated Revolving Commitments are established after giving pro forma effect to the incurrence of the entire committed amount of the Indebtedness thereunder (but without netting any cash proceeds thereof), such committed amount under such Designated Revolving Commitments may thereafter be borrowed (and reborrowed, if applicable), in whole or in part, from time to time, without further compliance with any Basket or financial ratio or test under this Agreement (including the Interest Coverage Ratio, Total Net Leverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio).

“Discharge” means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.

“Discharge of Senior Obligations” has the meaning given such term in the First Lien/Second Lien Intercreditor Agreement.

“Discount Prepayment Accepting Lender” has the meaning assigned to such term in Section 2.05(1)(e)(B)(2).

“Discount Range” has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).
“Discount Range Prepayment Amount” has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

“Discount Range Prepayment Notice” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(1)(e)(C)(1) substantially in the form of Exhibit J.

“Discount Range Prepayment Offer” means the written offer by a Lender, substantially in the form of Exhibit K, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“Discount Range Prepayment Response Date” has the meaning assigned to such term in Section 2.05(1)(e)(C)(1).

“Discount Range Proration” has the meaning assigned to such term in Section 2.05(1)(e)(C)(3).

“Discounted Loan Prepayment” has the meaning assigned to such term in Section 2.05(1)(e)(A).

“Discounted Prepayment Determination Date” has the meaning assigned to such term in Section 2.05(1)(e)(D)(3).

“Discounted Prepayment Effective Date” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(1)(e)(B), Section 2.05(1)(e)(C) or Section 2.05(1)(e)(D), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“disposition” has the meaning set forth in the definition of “Asset Sale.”

“Disqualified Institution” means (a) any competitor of the Borrower or its Subsidiaries identified in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Closing Date or (ii) the Administrative Agent from time to time after September 6, 2017, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by the Borrower to the Arrangers in writing (as provided herein) on or prior to the Closing Date (or related funds of any such Persons) and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) that are either (w) clearly identifiable as such solely on the basis of the similarity of their name or (x) are identified as such in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Closing Date or (ii) the Administrative Agent from time to time after the Closing Date (other than bona fide debt funds primarily investing in loans); provided that any Person that is a Lender or a Participant and subsequently becomes a Disqualified Institution (but was not a Disqualified Institution at the time it became a Lender or a Participant, as applicable) shall be deemed to not be a Disqualified Institution hereunder (in the case of any such Participant that is not a Lender, solely with respect to the participations held by such Participant); provided, further, that any updates, modifications or supplements to the list of Disqualified Institutions must be delivered by e-mail to JPMHQDQ_Contact@jpmorgan.com and shall become effective three (3) business days after such delivery (if the list of Disqualified Lenders and any updates, modifications or supplements are not delivered to JPMHQDQ_Contact@jpmorgan.com, they shall be deemed not received and ineffective). The identity of Disqualified Institutions may be communicated (i)
by the Administrative Agent to a Lender upon request and (ii) by any Lender to any prospective Lender, Participant or Eligible Assignee, subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that the identity of Disqualified Institutions is being disseminated on a confidential basis and that such prospective Lender, Participant or Eligible Assignee shall be bound by the same confidentiality restrictions as those applicable to the Lender making such communication, but will not be otherwise posted or distributed to any Person.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the then Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; provided that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability; provided further any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the “maximum fixed repurchase price” of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt, Consolidated First Lien Secured Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Borrower.

“Distressed Agent” shall have the meaning provided in the definition of the term Agent-Related Distress Event.

“Distressed Person” shall have the meaning provided in the definition of the term Lender-Related Distress Event.

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“Dollar” and “$” mean lawful money of the United States.

“Domestic Subsidiary” means any direct or indirect Subsidiary of the Borrower that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“ECF Payment Amount” has the meaning specified in Section 2.05(2)(a).

“ECF Percentage” has the meaning specified in Section 2.05(2)(a).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” has the meaning specified in Section 10.07(a).

“EMU” means the economic and monetary union as contemplated in the Treaty on European Union.

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

“Environmental Claim” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries (a) in the ordinary course of such Person’s business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability or Environmental Law (hereinafter “Claims”), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“Environmental Laws” means any and all Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, human health.

“Environmental Liability” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract or other written agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.
“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equal Priority Intercreditor Agreement” means, to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank equal in priority to the Liens on the Collateral securing the Second Lien Obligations under this Agreement (but without regard to the control of remedies), at the option of the Borrower and the Administrative Agent acting together in good faith, either (a) an intercreditor agreement substantially in the form of Exhibit G-1, together with any material changes thereto which are reasonably acceptable to the Administrative Agent and which material changes, at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof, (b) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank equal in priority to the Liens on the Collateral securing the Second Lien Obligations under this Agreement (but without regard to the control of remedies), in each case with such modifications thereto as the Administrative Agent and the Borrower may agree or (c) any other intercreditor agreement posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such intercreditor agreement within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement is reasonable and to have consented to such intercreditor agreement and to the Administrative Agent’s execution thereof.

“Equity Interests” means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

“Equity Offering” means any public or private sale of common equity or Preferred Stock of the Borrower or any Parent Company (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Borrower’s or any Parent Company’s common equity registered on Form S-4 or Form S-8;
(2) issuances to any Restricted Subsidiary of the Borrower; and
(3) any such public or private sale that constitutes an Excluded Contribution.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer 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 of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under
Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of withdrawal liability or written notification that a Multiemployer Plan is “insolvent” (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) 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; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 430(k) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

“Escrowed Proceeds” means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term “Escrowed Proceeds” shall include any interest earned on the amounts held in escrow.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Euro” or “euro” means the single currency of participating member states of the EMU.

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice;
provided, further, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower; provided, further, that if such rate is not available at such time for any reason, then the “LIBOR Rate” for such Interest Period shall be (a) a comparable successor or alternative interbank rate for deposits in Dollars that is, at such time, broadly accepted as the prevailing market practice for syndicated leveraged loans of this type in lieu of the “LIBOR Rate” and is reasonably acceptable to the Borrower and the Administrative Agent or (b) if no such broadly accepted comparable successor interbank rate exists at such time, a successor or alternative index rate as the Administrative Agent and the Borrower may reasonably determine and which successor or alternative index rate described in this clause (b), at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before effectiveness thereof and, if the Required Lenders shall not have objected to such successor or alternative index rate within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that such successor or alternative index rate is reasonable and to have consented to the effectiveness of such successor or alternative index rate; provided, further, that in no event shall the Eurodollar Rate for the Initial Loans that bear interest at a rate based on clauses (a) and (b) of this definition be less than 1.00%.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

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

“Excess Cash Flow” means, for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower for such period,

(b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(c) decreases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) and, without duplication, decreases in long-term accounts receivable and increases in the long-term portion of deferred revenue (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such decreases or increases, as applicable, arising from acquisitions or Asset Sales outside the ordinary course of assets by the Borrower or any Restricted Subsidiary during such period or the application of recapitalization or purchase accounting),

(d) [reserved];

(e) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period and

(f) cash receipts in respect of Hedge Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income; over
(2) the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of the Original Transactions or any Permitted Acquisition, Investment permitted hereunder or any similar transaction) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash losses, charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of the definition of “Consolidated Net Income,”

(b) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property accrued or made in cash during such period, in each case except to the extent financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (i) the principal component of payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans, Permitted Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), the First Lien Loans, “Permitted Incremental Equivalent Debt,” any “Other Loans” and “Credit Agreement Refinancing Indebtedness” (each, as defined in the First Lien Credit Agreement as in effect on the date hereof) and any other Indebtedness outstanding pursuant to Section 7.02 (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of First Lien Loans, mandatory prepayment of Loans pursuant to Section 2.05(2)(b), any mandatory prepayments of First Lien Loans pursuant to Section 2.05(2) of the First Lien Credit Agreement (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) and any mandatory discharge of (I) the First Lien Loans (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) (II) Permitted Incremental Equivalent Debt or Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), (III) “Permitted Incremental Equivalent Debt,” any “Other Loans” and “Credit Agreement Refinancing Indebtedness” (each, as defined in the First Lien Credit Agreement as in effect on the date hereof) and (IV) any other Indebtedness outstanding pursuant to Section 7.02 (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) pursuant to the corresponding provisions of the governing documentation thereof, in each case, to the extent required due to an Asset Sale or Casualty Event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase, but excluding (x) all other prepayments of Loans, (y) all prepayments in respect of any revolving credit facility
(including the Revolving Credit Loans (as defined in the First Lien Credit Agreement)), except to the extent there is an equivalent
permanent reduction in commitments thereunder and (z) payments on any Junior Indebtedness, except in each case to the extent permitted
to be paid pursuant to Section 7.05) made during such period, in each case, except to the extent financed with the proceeds of Funded Debt
(other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness
has been repaid),

(d) [Reserved],

(e) increases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa)
and, without duplication, increases in long-term accounts receivable and decreases in the long-term portion of deferred revenue
(except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any
such increases or decreases, as applicable, arising from acquisitions or Asset Sales outside the ordinary course by the Borrower or any
Restricted Subsidiary during such period or the application of recapitalization or purchase accounting),

(f) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the
Borrower and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are
not deducted in calculating Consolidated Net Income,

(g) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of cash consideration paid
by the Borrower and the Restricted Subsidiaries (on a consolidated basis) in connection with investments made during such period
(including Permitted Acquisitions, investments constituting Permitted Investments and investments made pursuant to Section 7.05), except
to the extent such investments were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit
facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(h) the amount of Restricted Payments paid in cash during such period (other than Restricted Payments made pursuant to
Section 7.05(b)(15)), except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (other than any
Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(i) the aggregate amount of expenditures (including expenditures for the payment of financing fees) paid in cash during such period
to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income,
except to the extent such expenditures were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving
credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(j) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted
Subsidiaries during such period that are made in connection with any prepayment or redemption of Indebtedness to the extent (x) such
premium, make-whole or penalty payments were not expensed during such period or are not deducted in calculating Consolidated Net
Income and (y) such prepayments or redemptions reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory
prepayment required by Section 2.05(2)(a),

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(k) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into prior to or during such period and (2) any planned cash expenditures by the Borrower or any of its Restricted Subsidiaries (the “Planned Expenditures”), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, acquisitions of intellectual property, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness)); provided that to the extent that the aggregate amount of internally generated cash flow actually utilized to finance such Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, acquisitions of intellectual property, permitted scheduled payments of Indebtedness that were permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow, at the end of such period of four consecutive fiscal quarters,

(l) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period plus the amount of distributions with respect to taxes made in such period under Section 7.05(b)(14), to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(m) cash expenditures in respect of Hedging Obligations during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income,

(n) any fees, expenses or charges incurred during such period (including the Transaction Expenses), or any amortization thereof for such period, in connection with any acquisition, investment, disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of this Agreement, the other Loan Documents, the First Lien Credit Documents and related documents with respect to any other Indebtedness) and including, in each case, any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful, and

(o) at the option of the Borrower, any amounts in respect of investments (including Permitted Acquisitions, Investments constituting Permitted Investments and Investments made pursuant to Section 7.05) and Restricted Payments (including related earnouts and similar payments) which could have been deducted pursuant to clauses (g) or (h) above if made in such period, but which are made after the end of such period and prior to the date upon which a mandatory prepayment for such period would be required under Section 2.05(2)(a) (which amounts, if so deducted in accordance with this clause (o), shall not affect the calculation of Excess Cash Flow in any future period).

“Excluded Assets” means (i) (x) any fee-owned real property (other than Material Real Property), (y) any leasehold interest in real property and (z) any improved fee-owned real property (whether already mortgaged, or is required or intended to be mortgaged, at any time of determination) located in a flood hazard area or such property or mortgage thereon would be subject to any flood insurance due diligence, flood insurance requirements or compliance with any flood insurance laws (it being agreed that (A) if it is subsequently determined that any such improved real property subject to, or otherwise required or intended to be subject to, a mortgage is or might be located in a flood hazard area, such property shall be deemed to constitute an Excluded Asset until a determination is made that such property is not located in a flood hazard area and does not require flood insurance, and (B) if there is an existing mortgage on such property, such mortgage shall be released if located in a special flood hazard area and would require flood insurance or if it cannot determined whether such fee owned real property is located in a special flood hazard area or would require flood insurance if the time or information necessary to make such determination would (as determined by the Borrower in good faith) delay or impair the intended date of funding any Loan or effectiveness of any amendment or supplement under this Agreement), (ii) motor vehicles and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) all commercial tort claims that are not expected to result in a judgment or settlement payment in excess of $25.0 million (as determined by the Borrower in good faith), (iv) any governmental or regulatory licenses, authorizations, certificates, charters, franchises, approvals and consents (whether Federal, State, Provincial or otherwise) to the extent a security interest therein is prohibited or restricted thereby or requires any consent or authorization from a Governmental Authority not obtained (without any requirement to obtain such consent or authorization) other than to the extent such prohibition or restriction is ineffective under the UCC or other applicable Law notwithstanding such prohibition and other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC, (v) assets to the extent the pledge thereof or grant of security interests therein (x) is prohibited or restricted by any applicable Law, rule or regulation or would require any consent, approval or authorization of any governmental or regulatory authority not obtained (without any requirement to obtain such any consent, approval or authorization) (other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition), (vi) margin stock and Equity Interests in any Person that is not the Borrower or a wholly owned Restricted Subsidiary of the Borrower, (vii) Equity Interests in Immaterial Subsidiaries and Excluded Subsidiaries (other than first tier Foreign Subsidiaries and first tier Foreign Subsidiary Holdcos that are Restricted Subsidiaries; provided that in the case of any first tier Foreign Subsidiary or first tier Foreign Subsidiary Holdco, the pledge of the Equity Interests of such Subsidiary shall be limited to no more than 65% of the total issued and outstanding Equity Interests of a Foreign Subsidiary or Foreign Subsidiary Holdco), (viii) any lease, license or agreement (not otherwise subject to clause (v) above) or any property that is subject to a capital lease, purchase money security interest or similar arrangement, in each case permitted by this Agreement, to the extent that a grant of a security interest therein (a) would
violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law or (b) would require governmental or regulatory approval, consent or authorization not obtained (without any requirement to obtain such approval, consent or authorization), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition), (ix) [reserved], (x) letter of credit rights, except to the extent constituting a supporting obligation for other Collateral as to which perfection of the security interest therein is accomplished by the filing of a UCC financing statement, (xi) any intent-to-use trademark applications filed in the United States Patent and Trademark Office, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. Section 1051, prior to the accepted filing of a “Statement of Use” and issuance of a “Certificate of Registration” pursuant to Section 1(d) of the Lanham Act or an accepted filing of an “Amendment to Allege Use” whereby such intent-to-use trademark application is converted to a “use in commerce” application pursuant to Section 1(c) of the Lanham Act, (xii) assets where the burden or cost (including any adverse tax consequences) of obtaining a security interest therein or perfection thereof exceeds the practical benefit to the Lenders afforded thereby as reasonably determined between the Borrower and the Administrative Agent, (xiii) any assets to the extent a security interest in such assets or perfection thereof would result in material adverse tax consequences to the Borrower, any Parent Company or any Restricted Subsidiary as reasonably determined by the Borrower in good faith, in consultation with the Administrative Agent (it being understood that prior to the Discharge of Senior Obligations, the determination of the Designated Senior Representative (as defined in the First Lien/Second Lien Intercreditor Agreement) in respect of the matters described in this clause (xiii) shall be deemed to be the determination of the Administrative Agent with respect to such matters), (xiv) any assets located in or governed by any non-U.S. jurisdiction law or regulation (other than (x) Equity Interests and intercompany debt of Foreign Subsidiaries otherwise required to be pledged pursuant to the Collateral Documents and (y) assets that can be perfected by the filing of a UCC financing statement), including any intellectual property located in a non-U.S. jurisdiction and (xv) cash and Cash Equivalents (except to the extent constituting identifiable proceeds of Collateral which is perfected by the filing of a UCC financing statement), deposit, securities, commodities and other accounts, securities entitlements and related assets held in such account except, in each case, to the extent a security interest therein is perfected by filing of a UCC financing statement and other than any cash or assets deposited with a Secured Party as Collateral.

“Excluded Contribution” means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

(2) dividends, distributions, fees and other payments from any joint ventures that are not Restricted Subsidiaries; and

(3) the sale (other than to a Restricted Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower;

in each case, designated as Excluded Contributions pursuant to an Officer’s Certificate and that are excluded from the calculation set forth in clause (3) of Section 7.05(a); provided that Excluded Contributions shall not include Cure Amounts (as defined in the First Lien Credit Agreement).
“Excluded Proceeds” means, with respect to any Asset Sale or Casualty Event, the sum of, (1) any Net Proceeds therefrom that constitute Declined Proceeds and (2) any Net Proceeds therefrom that otherwise are waived by the Required Facility Lenders from the requirement to be applied to prepay the applicable Loans pursuant to Section 2.05(2)(b).

“Excluded Subsidiaries” means all of the following and “Excluded Subsidiary” means any of them:

1. any Subsidiary that is not a direct, wholly owned Subsidiary of the Borrower or a Subsidiary Guarantor,
2. any Foreign Subsidiary,
3. any Foreign Subsidiary Holdco,
4. any Domestic Subsidiary that is a Subsidiary of any (i) Foreign Subsidiary or (ii) Foreign Subsidiary Holdco,
5. any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law or by Contractual Obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty (including any Broker-Dealer Regulated Subsidiary) or if such Guaranty would require governmental (including regulatory) or third party (other than any Loan Party or their respective Subsidiaries) consent, approval, license or authorization not obtained,
6. any special purpose vehicle (or similar entity), receivables subsidiary or any Securitization Subsidiary,
7. any Captive Insurance Subsidiary or not-for-profit Subsidiary,
8. any Subsidiary that is not a Material Subsidiary,
9. any Subsidiary where the Borrower and the Administrative Agent reasonably determine that the burden or cost (including any adverse tax consequences) of providing the Guaranty will outweigh the benefits to be obtained by the Lenders therefrom (it being understood that prior to the Discharge of Senior Obligations, the determination of the First Lien Administrative Agent in respect of the matters described in this clause (9) shall be deemed to be the determination of the Administrative Agent with respect to such matters),
10. any Unrestricted Subsidiary, and
11. any Excluded Subsidiary under and as defined in the First Lien Credit Documents;

“Excluded Swap Obligation” means, with respect to any Loan Party, (a) any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act (each such obligation, a “Swap Obligation”), if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant
by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.02 of the Guaranty and any other “keepwell, support or other agreement” for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the guarantee of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation, or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Party is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Loan Party becomes or would become effective with respect to such Swap Obligation, or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Loan Party as specified in any agreement between the relevant Loan Parties and hedge counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to each Agent and each Lender,

(1) any tax imposed on (or measured by) such Agent or Lender’s net income or profits (or franchise or net worth tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction), other than a connection arising solely from such Agent or Lender having executed, delivered, enforced, 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 any Loan or Loan Document,

(2) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any jurisdiction described in clause (1),

(3) other than with respect to and to the extent that any Lender becomes a party hereto pursuant to the Borrower’s request under Section 3.07, any U.S. federal tax that is withheld or required to be withheld on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which such Lender acquires such interest or the date on which the affected partner becomes a partner of such Lender), or (ii) designates a new Lending Office (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which the Lender designates a new Lending Office or, if applicable, the date on which the affected partner designates a new Lending Office) except, in the case of a Lender or partner that designates a new Lending Office or is an assignee, to the extent that such Lender or partner (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal tax pursuant to Section 3.01,
(4) any withholding tax attributable to such Lender’s failure to comply with Section 3.01(3),
(5) any tax imposed under FATCA,
(6) any U.S. federal backup withholding under Section 3406 of the Code, and
(7) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (6) of this definition.

“Excluded TPG/Intel Costs” means all Charges in connection with services, including consulting arrangements, provided by any employee of TPG Capital L.P. and/or or Intel Corporation or any of their respective Affiliates (other than any such Charges incurred under the TSA).

“Existing Loan Class” has the meaning specified in Section 2.16(1).

“Extended Loans” has the meaning specified in Section 2.16(1).

“Extending Lender” has the meaning specified in Section 2.16(3).

“Extension” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“Extension Amendment” has the meaning specified in Section 2.16(4).

“Extension Election” has the meaning specified in Section 2.16(3).

“Extension Minimum Condition” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“Extension Request” has the meaning specified in Section 2.16(1).

“Extension Series” has the meaning specified in Section 2.16(1).

“Facilities” means the Initial Loans, a given Class of Other Loans, a given Extension Series of Extended Loans, a given Class of Incremental Loans or a given Class of Replacement Loans, as the context may require, and “Facility” means any of them.

“fair market value” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“FATCA” means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any current or future regulations promulgated thereunder or official interpretations thereof), any applicable intergovernmental agreement entered into in respect thereof, and any provision of law or administrative guidance implementing or interpreting such provisions, including any agreements entered into pursuant to any such intergovernmental agreement or Section 1471(b)(1) of the Code as of the date hereof (or any amended or successor version described above).
“FCPA” has the meaning specified in Section 5.01.

“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, 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 (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three depository institutions of recognized standing selected by it. For the avoidance of doubt, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Financial Officer” means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

“First Lien Administrative Agent” means Morgan Stanley Senior Funding, Inc., in its capacity as administrative agent and collateral agent under the First Lien Credit Documents, or any successor administrative agent and/or collateral agent (or other Debt Representative), as the case may be, under the First Lien Credit Documents.

“First Lien Credit Agreement” means that certain First Lien Credit Agreement dated as of the Closing Date by and among Holdings, the Borrower, the lenders party thereto in their capacities as lenders thereunder, the First Lien Administrative Agent, as agent and the other agents party thereto, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more indentures, credit agreements or other agreements (in each case with the same or new lenders, noteholders, institutional investors or agents), including any indentures or credit agreements that replace, refund, supplement, extend, renew, restate, amend, modify or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent not prohibited by this Agreement and the First Lien/Second Lien Intercreditor Agreement. Unless otherwise expressly provided herein, references to provisions of the First Lien Credit Agreement, including references to definitions of terms in (or meanings assigned to terms in) the First Lien Credit Agreement and references to Sections of the First Lien Credit Agreement, shall be deemed to refer to (x) such provisions of the First Lien Credit Agreement as in effect on the Closing Date or (y) if the First Lien Credit Agreement has been amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced, substantially similar or corresponding provisions of the First Lien Credit Agreement as in effect from time to time.

“First Lien Credit Agreement Termination Date” means the date on which (a) all “Obligations” as defined in, and under, the First Lien Credit Agreement, have been paid in full in cash (other than (i) any such obligations constituting indemnification obligations for which no claim has been asserted at such time and (ii) obligations under “Secured Hedge Agreements” and “Cash Management Obligations” (each, as defined in the First Lien Credit Agreement)), (b) all “Commitments” (as defined in the First Lien Credit Agreement), if any, to extend credit under the First Lien Credit Agreement have terminated or expired and (c) each “Letter of Credit” (as defined in the First Lien Credit Agreement)
issued under the First Lien Credit Documents has been terminated or otherwise ceases to remain outstanding (unless the "Outstanding Amount" (as defined in the First Lien Credit Agreement) of the "L/C Obligations" (as defined in the First Lien Credit Agreement) related thereto has been "Cash Collateralized" (as defined in the First Lien Credit Agreement), backstopped by a letter of credit or deemed to be reissued under another agreement, in each case, reasonably satisfactory to the applicable “Issuing Bank” (as defined in the First Lien Credit Agreement).

"First Lien Credit Documents" means the First Lien Credit Agreement, the First Lien/Second Lien Intercreditor Agreement and the other Loan Documents (as defined in the First Lien Credit Agreement) (or in each case, any comparable term).

"First Lien Credit Facilities" means the “Facilities” as defined in the First Lien Credit Agreement.

"First Lien Incremental Usage Amount" means, at any time, the sum of (x) the aggregate principal amount of “Incremental Loans” (as defined in the First Lien Credit Agreement) outstanding pursuant to clause (A)(1) of Section 2.14(4)(c) of the First Lien Credit Agreement and (y) the aggregate principal amount of “Permitted Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement) outstanding pursuant to clause (ii) of the definition of “Permitted Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement) in reliance on the “Available Incremental Amount” (as defined in the First Lien Credit Agreement) available under clause (A)(1) of Section 2.14(4)(c) of the First Lien Credit Agreement (any such Indebtedness described in clauses (x) and (y), the "First Lien Incremental Usage Amount Debt").

"First Lien Initial Loans" means the “Closing Date Loans” as defined in the First Lien Credit Agreement.

"First Lien Initial Term Loans" means the “Closing Date Term Loans” as defined in the First Lien Credit Agreement.

"First Lien Loans" means the Indebtedness incurred under the First Lien Credit Agreement, including the “Loans” (as defined in the First Lien Credit Agreement).

"First Lien Net Leverage Ratio" means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Secured Debt outstanding as of the last day of such Test Period, minus the Unrestricted Cash Amount on such last day to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"First Lien Obligations" means the Obligations, the Permitted Incremental Equivalent Debt and the Credit Agreement Refinancing Indebtedness, in each case, that are, or purported to be, secured by the Collateral on an equal priority basis (but without regard to the control of remedies) with Liens on the Collateral securing the First Lien Initial Term Loans. For the avoidance of doubt, “First Lien Obligations” shall include the First Lien Initial Term Loans.

"First Lien/Second Lien Intercreditor Agreement" means any of (a) the First Lien/Second Lien Intercreditor Agreement in substantially in the form of Exhibit G-2, dated as of the Closing Date, among Morgan Stanley Senior Funding, Inc., the Loan Parties, Collateral Agent, as Second Priority Representative for the Second Priority Debt Parties (each, as defined therein) and each additional representative party thereto from time to time, (b) an intercreditor agreement substantially in the form of Exhibit G-2, together with any material changes thereto which are reasonably acceptable to the Borrower.
and the Administrative Agent and which material changes, at the discretion of the Administrative Agent, may be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof, (c) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior in priority to the Liens on the Collateral securing the First Lien Obligations under the First Lien Credit Agreement, in each case with such modifications thereto as the Administrative Agent and the Borrower may agree or (d) any other intercreditor agreement posted to the Lenders not less than five (5) Business Days before execution thereof, and if the Required Lenders shall not have objected to such intercreditor agreement within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement is reasonable and to have consented to such intercreditor agreement and to the Administrative Agent’s execution thereof.

“First Lien Term Lenders” means the “Term Lenders” as defined in the First Lien Credit Agreement.

“First Lien Term Loans” has the meaning assigned to the term “Term Loans” in the First Lien Credit Agreement.

“Flood Insurance Laws” means, collectively, (i) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“floor” means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

“Foreign Asset Sale” has the meaning specified in Section 2.05(2)(h).

“Foreign Casualty Event” has the meaning specified in Section 2.05(2)(h).

“Foreign Lender” means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“Foreign Plan” means any employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

“Foreign Subsidiary” means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

“Foreign Subsidiary Holdco” means a Subsidiary substantially all of whose assets consists (directly or indirectly) of the Capital Stock or indebtedness of one or more Foreign Subsidiaries.
“Fund” means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time. At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); provided, however, that any such election, once made, will be irrevocable; provided, further that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower’s election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. The Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with Section 1.03 and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or the Loan Parties at “fair value”, as defined therein.

Notwithstanding the foregoing, if at any time any change occurs after the Closing Date in GAAP (or IFRS) or in the application thereof that, in each case, would affect the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document (including, but not limited to, the impact of Accounting Standards Update 2016-2, Revenue from Contracts with Customers (Topic 606) or similar revenue recognition policies promulgated after the Closing Date), and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); provided that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) without giving effect to such change therein and (b) if reasonably requested by the Administrative Agent with respect to periods ending prior to the date that is one year after the effectiveness of such change, the Borrower shall provide to the Administrative Agent (for distribution to the Lenders), together with any financial statements to be delivered pursuant to Section 6.01, a summary reconciliation between calculations of any such ratios or requirements required to be included in the corresponding Compliance Certificate to be delivered pursuant to Section 6.02(4) made before and after giving effect to such change in GAAP (or IFRS). For the avoidance of doubt, subject to the requirements of the foregoing clause (b), the operation of this paragraph shall otherwise have no effect with respect to any financial statements required to be delivered pursuant to Section 6.01 unless the Borrower otherwise elects.
“General Debt Basket Reallocated Amount” means any amount that, at the option of the Borrower, has been reallocated from Section 7.02(b)(12)(b) to clause (A)(1) of the Available Incremental Amount, which shall be deemed to be a utilization of the Basket set forth in Section 7.02(b)(12)(b).

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

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

“guarantee” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with the Transaction or any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor” has the meaning specified in clause (2) of the definition of “Collateral and Guarantee Requirement.” For avoidance of doubt, the Borrower may, in its sole discretion, cause any Parent Company or Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Restricted Subsidiary shall be a Guarantor hereunder for all purposes; provided that (i) in the case of any Parent Company or Restricted
Subsidiary organized in a foreign jurisdiction, the Administrative Agent shall be reasonably satisfied with the jurisdiction of organization of such Parent Company or Restricted Subsidiary and (ii) the Administrative Agent shall have received at least two (2) Business Days prior to the effectiveness of such joinder (or such later date as reasonably agreed by the Administrative Agent) all documentation and other information in respect of such Guarantor required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

“Guaranty” means (a) the Guaranty substantially in the form of Exhibit E made by Holdings and each Subsidiary Guarantor, (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11 and (c) each other guaranty and guaranty supplement delivered by any Parent Company or Restricted Subsidiary pursuant to the second sentence of the definition of “Guarantor.”

“Hazardous Materials” means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

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

“Hedge Bank” means any Person party to a Secured Hedge Agreement that is an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing on the Closing Date or at the time it enters into such Secured Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedge Agreement. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

“Holdings” has the meaning specified in the introductory paragraph to this Agreement.

“Identified Participating Lenders” has the meaning specified in Section 2.05(1)(e)(C)(3).

“Identified Qualifying Lenders” has the meaning specified in Section 2.05(1)(e)(D)(3).

“IFRS” means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.
“Immaterial Subsidiary” means any Restricted Subsidiary of the Borrower that is not a Material Subsidiary.

“Immediate Family Members” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Incremental Amendment” has the meaning specified in Section 2.14(6).

“Incremental Amounts” has the meaning specified in clause (1) of the definition of Refinancing Indebtedness.

“Incremental Commitments” has the meaning specified in Section 2.14(1).

“Incremental Facility Closing Date” has the meaning specified in Section 2.14(4).

“Incremental Lenders” has the meaning specified in Section 2.14(3).

“Incremental Loan” has the meaning specified in Section 2.14(2).

“Incremental Loan Request” has the meaning specified in Section 2.14(1).

“Indebtedness” means, with respect to any Person, without duplication:
(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:
   (a) in respect of borrowed money;
   (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);
   (c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business; or
(d) representing the net obligations under any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; provided that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person; provided that notwithstanding the foregoing, Indebtedness will be deemed not to include:

(i) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice,

(ii) reimbursement obligations under commercial letters of credit (provided that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) obligations under or in respect of Qualified Securitization Facilities,

(iv) accrued expenses,

(v) deferred or prepaid revenues, and

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

provided further that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

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

“Indemnitees” has the meaning specified in Section 10.05.

“Independent Assets or Operations” means, with respect to any Parent Company, that Parent Company’s total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company’s corresponding consolidated amount.
“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

“Information” has the meaning specified in Section 10.09.

“Initial Loans” means the Loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01(1).

“Intellectual Property Security Agreements” has the meaning specified in the Security Agreement.

“Intercompany Note” means the Intercompany Note, dated as of the Closing Date, substantially in the form of Exhibit Q executed by the Borrower and each Restricted Subsidiary of the Borrower party thereto.

“Intercreditor Agreement” means, as applicable, any First Lien/Second Lien Intercreditor Agreement and any Equal Priority Intercreditor Agreement.

“Interest Coverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period to (b) Consolidated Interest Expense of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

“Interest Payment Date” means, (a) as to any Loan of any Class other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date of the Loans of such Class; provided that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan of any Class, the last Business Day of each March, June, September and December and the applicable Maturity Date of the Loans of such Class.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, or to the extent consented to by each applicable Lender, twelve months, as selected by the Borrower in its Committed Loan Notice; provided that:

1. any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

2. any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
(3) No Interest Period shall extend beyond the applicable Maturity Date for the Class of Loans of which such Eurodollar Rate Loan is a part.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of “Permitted Investments” and “Unrestricted Subsidiary” and Section 7.05,

(1) “Investments” will include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower will be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation; minus

(b) the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.
The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

“Investor” means any of (i) TPG Capital, L.P., Thoma Bravo, LLC, GIC Pte Ltd., StepStone Group LP, Fisher Lynch Co-Investment Partnership II, L.P., Performance Equity Management, any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing and (ii) Intel Corporation and any of its Affiliates.

“IP Rights” has the meaning specified in Section 5.15.

“IRS” means Internal Revenue Service of the United States.

“Junior Indebtedness” means any Indebtedness of any Loan Party that by its terms is contractually subordinated in right of payment or security to the Obligations of such Loan Party arising under the Loans or the Guaranty.

“Junior Lien Debt” has the meaning specified in clause (39) of the definition of “Permitted Liens”.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Loan, any Incremental Commitment, any Other Loan, any Replacement Loan or any Extended Loan, in each case as extended in accordance with this Agreement from time to time.

“Laws” means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, 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.

“Legal Holiday” means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

“Lender” has the meaning specified in the introductory paragraph to this Agreement and such Lender’s successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.” For the avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, an Incremental Amendment or an amendment in respect of Replacement Loans, as the case may be, and to the extent such Refinancing Amendment, Incremental Amendment or amendment in respect of Replacement Loans shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, Schedule 2.01 sets forth the name of each Lender. Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) without the Borrower’s written consent shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings; provided that the Loans of any such Disqualified Institution shall not be excluded for purposes of making a determination of Required Lenders if the action in question affects such Disqualified Institution in a disproportionately adverse manner than its effect on
the other Lenders; provided, further, that if any assignment or participation is made to any Disqualified Institution without the Borrower’s prior written consent in violation of clause (v) of Section 10.07(b) the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) purchase or prepay any Loan held by a Disqualified Institution by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

“Lender-Related Distress Event” means, with respect to any Lender or any direct or indirect parent company of such Lender (each, a “Distressed Person”), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or (d) that such Distressed Person becomes the subject of a Bail-in Action; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any direct or indirect parent company of a Lender by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“LIBOR” has the meaning specified in the definition of “Eurodollar Rate.”

“Lien” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; provided that in no event will an operating lease be deemed to constitute a Lien.

“Limited Condition Transactions” means any (1) Permitted Acquisition or other Investment or similar transaction (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise) permitted hereunder by the Borrower or one or more of its Restricted Subsidiaries, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness and (3) any Restricted Payment requiring irrevocable notice in advance thereof (other than in connection with any Restricted Payment to any Permitted Holders or any other beneficial owners of the Borrower).
“Loan” means an extension of credit under Article II by a Lender to the Borrower in the form of an Initial Loan, Incremental Loan, Other Loan, Extended Loan or Replacement Loan, as the context may require.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) any Refinancing Amendment, Incremental Amendment, Extension Amendment or amendment in respect of Replacement Loans, (d) the Guaranty, (e) the Collateral Documents and (f) the Intercreditor Agreements.

“Loan Increase” has the meaning specified in Section 2.14(1).

“Loan Parties” means, collectively, (a) Holdings, (b) the Borrower and (c) each Subsidiary Guarantor.

“Management Services Agreement” means the management services agreement or similar agreements among one or more of the Investors or certain of their respective management companies associated with it or their advisors, if applicable, and the Borrower (or any Parent Company).

“Management Stockholders” means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date.

“Margin Stock” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Market Capitalization” means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Borrower or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 7.05(b)(8) multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“Material Adverse Effect” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under the Loan Documents.

“Material Domestic Subsidiary” means any Domestic Subsidiary that is a Material Subsidiary.

“Material Foreign Subsidiary” means any Foreign Subsidiary that is a Material Subsidiary.

“Material Real Property” means any fee-owned real property located in the United States and owned by any Loan Party with a fair market value in excess of $75.0 million on the Closing Date (if owned by a Loan Party on the Closing Date) or at the time of acquisition (if acquired by a Loan Party after the Closing Date).
“Material Subsidiary” means, as of the Closing Date and thereafter at any date of determination, each Restricted Subsidiary of the Borrower (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and the Restricted Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; provided that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), all Restricted Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of the Borrower and the Restricted Subsidiaries as of the last day of the most recent Test Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiaries for such Test Period) 7.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than sixty (60) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more Restricted Subsidiaries as “Material Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Restricted Subsidiaries (to the extent applicable), in each case, other than any Restricted Subsidiaries that otherwise constitute Excluded Subsidiaries. At all times prior to the delivery of the aforementioned financial statements, such determinations shall be made based on the Pro Forma Financial Statements.

“Maturity Date” means (i) with respect to the Initial Loans that have not been extended pursuant to Section 2.16, the eighth anniversary of the Closing Date (the “Original Maturity Date”), (ii) with respect to any Class of Extended Loans, the final maturity date as specified in the applicable Extension Amendment, (iii) with respect to any Other Loans, the final maturity date as specified in the applicable Refinancing Amendment, (iv) with respect to any Class of Replacement Loans, the final maturity date as specified in the applicable amendment to this Agreement in respect of such Replacement Loans and (v) with respect to any Incremental Loans, the final maturity date as specified in the applicable Incremental Amendment; provided, in each case, that if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“Maximum Rate” has the meaning specified in Section 10.11.

“McAfee Business” means the business conducted by Foundation Technology Worldwide LLC and its Subsidiaries.

“Moody’s” means Moody's Investors Service, Inc. and any successor to its rating agency business.

“Mortgage Policies” has the meaning specified in Section 6.11(2)(b)(ii).

“Mortgaged Properties” has the meaning specified in paragraph (5) of the definition of “Collateral and Guarantee Requirement.”

“Mortgages” means collectively, the deeds of trust, trust deeds, hypothecs, deeds to secure debt and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, pursuant to Section 6.13(2) and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered pursuant to Section 6.11.
“Multiemployer Plan” means any multimember plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Income” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Proceeds” means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate cash and Cash Equivalents received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable Law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event by a Restricted Subsidiary, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable (including any additional Tax Distributions to be made as a result of the transactions giving rise to such cash and cash equivalents received) as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than the Second Lien Obligations and Indebtedness secured by Liens that are expressly subordinated to the Liens securing the Obligations) secured by a Lien on such assets and required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; provided that (a) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed $31.25 million and (b) no such net cash proceeds shall constitute Net Proceeds under this clause (1) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed $62.5 million (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (1)); and
(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, any Permitted Equity Issuance by the Borrower or any Parent Company or any contribution to the common equity capital of the Borrower, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

“Net Proceeds Percentage” has the meaning specified in Section 2.05(b)(2)(b)

“Non-Consenting Lender” has the meaning specified in Section 3.07.

“Non-Excluded Taxes” means all 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.

“Non-Recourse Indebtedness” means Indebtedness that is non-recourse to the Borrower and the Restricted Subsidiaries.

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

“Obligations” means all

1. advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and other amounts are allowed claims in such proceeding,

2. obligations (other than Excluded Swap Obligations) of any Loan Party or Restricted Subsidiary arising under any Secured Hedge Agreement, unless and for so long as such obligations constitute “Obligations” (as defined in the First Lien Credit Agreement) prior to the First Lien Credit Agreement Termination Date and

3. Cash Management Obligations under each Secured Cash Management Agreement, unless and for so long as such obligations constitute “Obligations” (as defined in the First Lien Credit Agreement) prior to the First Lien Credit Agreement Termination Date. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document.

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Hedge Bank or Cash Management Bank, the obligations of Holdings, the Borrower or any Subsidiary under any Secured Hedge Agreement and under any Secured Cash Management Agreement

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shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Hedging Obligations under Secured Hedge Agreements or of the holders of Cash Management Obligations under Secured Cash Management Agreements.

“OFAC” has the meaning specified in Section 5.17.

“Offered Amount” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Offered Discount” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Officer” means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Borrower or any other Person, as the case may be.

“Officer’s Certificate” means a certificate signed on behalf of a Person by an Officer of such Person.

“OID” means original issue discount.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

“ordinary course of business” means activity conducted in the ordinary course of business of the Borrower and any Restricted Subsidiary.

“Organizational Documents” means

(1) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Original Maturity Date” has the meaning specified in the definition of “Maturity Date.”

“Other Applicable ECF” means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

“Other Applicable Indebtedness” means Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Indebtedness secured on a pari passu basis with the Obligations, together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a pari passu basis with the Obligations.

“Other Applicable Net Proceeds” means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

“Other Commitments” means one or more Classes of Loan commitments hereunder that result from a Refinancing Amendment.

“Other Loans” means one or more Classes of Loans that result from a Refinancing Amendment.

“Other Taxes” means all present or future stamp or documentary Taxes, intangible, recording, filing, excise (that is not based on net income), property or similar Taxes arising 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 imposed with respect to an assignment, grant of participation, designation of a new office for receiving payments by or on account of the Borrower or other transfer (other than an assignment, designation or other transfer at the request of the Borrower).

“Outstanding Amount” means, with respect to the Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments occurring on such date.

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“Parent Company” means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of Holdings and/or the Borrower (for the avoidance of doubt, in the case of the Borrower, including Holdings), as applicable.

“Pari Passu Lien Debt” has the meaning specified in clause (39) of the definition of “Permitted Liens.”

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

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

“Participating Lender” has the meaning specified in Section 2.05(1)(e)(C)(2).

“Partnership Audit Rules” means Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015 (and any Treasury regulations or other guidance that may be promulgated in the future relating thereto) and, in each case, any analogous provisions of state, local, and non-U.S. law.

“PBGC” means the Pension Benefit Guaranty Corporation.
“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates 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 preceding five plan years.

“Perfection Certificate” has the meaning specified in the Security Agreement.

“Permitted Acquisition” has the meaning specified in clause (3) of the definition of “Permitted Investments.”

“Permitted Asset Swap” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Borrower or any Restricted Subsidiary and another Person; provided that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with Section 2.05(2)(b)(i).

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) on the Borrower’s common equity purchased by the Borrower in connection with the issuance of any Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

“Permitted Convertible Indebtedness Call Transaction” means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

“Permitted Equal Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Guarantor in the form of one or more series of senior secured notes, bonds or debentures or pari passu secured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); provided that (i) such Indebtedness is secured by Liens on all or a portion of the Collateral on a basis that is equal in priority to the Liens on the Collateral securing the Second Lien Obligations under this Agreement (but without regard to the control of remedies) and is not secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the applicable requirements set forth in the provisos to the definition of “Credit Agreement Refinancing Indebtedness,” (iii) such Indebtedness is not at any time guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors and (iv) the applicable Loan Parties, the holders of such Indebtedness (or their Debt Representative) and the Administrative Agent and/or Collateral Agent shall be party to an Intercreditor Agreement providing that the Liens on the Collateral securing such obligations shall rank equal in priority to the Liens on the Collateral securing the Second Lien Obligations under this Agreement (but without regard to the control of remedies).

“Permitted Equity Issuance” means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

“Permitted Holder” means (1) any of the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; provided that in the case of such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively,
have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent held by such group and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Parent Company.

“Permitted Incremental Equivalent Debt” means Indebtedness issued, incurred or otherwise obtained by the Borrower and/or any Guarantor in respect of one or more series of senior unsecured notes, senior secured pari passu or junior lien notes or subordinated notes (in each case whether issued in a public offering, Rule 144A or other private placement or bridge financing in lieu of the foregoing (and any Registered Equivalent Notes issued in exchange therefor) or otherwise), pari passu or junior lien loans, unsecured or subordinated loans or secured or unsecured mezzanine Indebtedness that, in each case, if secured, will be secured by Liens on the Collateral on an equal priority (but without regard to the control of remedies) or junior priority basis with the Liens on Collateral securing the Second Lien Obligations under this Agreement, and that are issued or made in lieu of Incremental Commitments; provided that:

(i) the terms of any such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith) or (B) if otherwise not consistent with the terms of the Initial Loans, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of the Initial Loans, except with respect to covenants and other terms applicable to any period after the Latest Maturity Date of the Initial Loans;

(ii) the aggregate principal amount of all Permitted Incremental Equivalent Debt shall not exceed the Available Incremental Amount at the time of incurrence (it being understood that for purposes of this clause (ii), references in Section 2.14(4)(c)(B) and Section 2.14(4)(c)(D) (other than the first proviso thereto) to Incremental Loans or Incremental Commitments shall be deemed to be references to Permitted Incremental Equivalent Debt);

(iii) such Permitted Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party;

(iv) in the case of Permitted Incremental Equivalent Debt that is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of the Borrower or any Restricted Subsidiary other than any asset constituting Collateral;

(v) if such Permitted Incremental Equivalent Debt is secured, such Permitted Incremental Equivalent Debt shall be subject to the applicable Intercreditor Agreement(s);

(vi) such Permitted Incremental Equivalent Debt (a) shall not mature earlier than the Original Maturity Date and (b) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Initial Loans on the date of incurrence of such Permitted Incremental Equivalent Debt;
(vii) any mandatory prepayments of (I) any Permitted Incremental Equivalent Debt that comprises junior lien or unsecured notes or loans may not be made except to the extent that prepayments of such debt are not prohibited hereunder and to the extent required hereunder or pursuant to the terms of any Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the Second Lien Obligations under this Agreement, first made or offered to the holders of the Loans constituting Second Lien Obligations and any such Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the Second Lien Obligations under this Agreement, and (II) any Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the Second Lien Obligations under this Agreement in respect of events described in Section 2.05(2)(a), (b) and (d)(i) may be made on a pro rata basis, less than a pro rata basis or greater than a pro rata basis (but not greater than a pro rata basis as compared to any Class of Loans constituting Second Lien Obligations with an earlier maturity date) with the Loans constituting Second Lien Obligations; and

(viii) in the case of Permitted Incremental Equivalent Debt consisting of syndicated Dollar-denominated term loans secured by a Lien on the Collateral ranking pari passu with the Second Lien Obligations under this Agreement, the All-In Yield of the Initial Loans shall be subject to the adjustment in the manner set forth in the proviso to Section 2.14(5)(b) (to the extent then applicable), determined for purposes of this clause (viii) as if the Permitted Incremental Equivalent Debt were Incremental Loans;

provided, further, that “Permitted Incremental Equivalent Debt” may be incurred in the form of a bridge or other interim credit facility intended to be refinanced or replaced with long term indebtedness (so long as such credit facility includes customary “rollover provisions” that satisfy the requirements of clause (vi) above following such rollover), in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other credit facility, clause (vi) of the first proviso in this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

“Permitted Indebtedness” means Indebtedness permitted to be incurred in accordance with Section 7.02.

“Permitted Investments” means:

(1) any Investment in the Borrower or any Restricted Subsidiary;

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) (a) any Investment by the Borrower or any Restricted Subsidiary in any Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business if as a result of such Investment (i) such Person becomes a Restricted Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting a business unit, a line of business or a division of such Person, to, or is liquidated into, the Borrower or a Restricted Subsidiary (a “Permitted Acquisition”); provided that immediately after giving pro forma effect to any such Investment, no Event of Default under Section 8.01(1) or Section 8.01(6) shall have occurred and be continuing; and

(b) any Investment held by such Person described in the preceding clause (a); provided that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;
(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each of the foregoing cases with respect to any such Investment or binding commitment in effect on the Closing Date in excess of $18.75 million, as set forth on Schedule 7.05, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; provided that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;

(6) any Investment acquired by the Borrower or any Restricted Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(10);

(8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding not to exceed (as of the date such Investment is made) the greater of (a) $337.5 million and (b) 43.75% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company; provided that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of Section 7.05(a);
(10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the
ordinary course of business or consistent with industry practice, and (b) the creation of Liens on the assets of the Borrower or any Restricted
Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of
Section 7.07(b) (except transactions described in clauses (2), (5), (9), (15) or (22) of such Section);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services, equipment or similar assets or the
licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed
(as of the date such Investment is made) the greater of (i) $337.5 million and (ii) 43.75% of Consolidated EBITDA of the Borrower and the
Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma
basis);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower, are necessary or
advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation
in connection therewith (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the
Borrower or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, independent contractors and
members of management not in excess of $31.25 million outstanding at any one time, in the aggregate;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-
related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary
course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors,
officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family
Members) to fund such Person’s purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the
ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related
activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with
industry practice;
(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (i) $287.5 million and (ii) 37.5% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable Law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) Investments made as part of, to effect or resulting from the Transactions;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Borrower and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director’s, officer’s, employee’s consultant’s or independent contractor’s acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;
(31) Investments resulting from pledges and deposits permitted pursuant to the definition of “Permitted Liens”;

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(33) any Investments if on a pro forma basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than 4.75 to 1.00 as of the last day of the Test Period most recently ended; and

(34) Permitted Bond Hedge Transactions.

“Permitted Junior Priority Refinancing Debt” means secured Indebtedness incurred by the Borrower and/or any Guarantor in the form of one or more series of junior lien secured notes, bonds or debentures or junior lien secured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); provided that (i) such Indebtedness is secured by a Lien on all or a portion of the Collateral on a junior priority basis to the Liens on Collateral securing the Second Lien Obligations under this Agreement and is not secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the applicable requirements set forth in the provisos in the definition of “Credit Agreement Refinancing Indebtedness,” (iii) the holders of such Indebtedness (or their Debt Representative) and the Administrative Agent and/or the Collateral Agent shall be party to an Intercreditor Agreement providing that the Liens on Collateral securing such obligations shall rank junior to the Liens on Collateral securing the Second Lien Obligations under this Agreement, and (iv) such Indebtedness is not at any time guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

“Permitted Liens” means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

(a) workers’ compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations,

(b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

(c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers’ acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of
Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords’, carriers’, warehousemen’s, materialmen’s, repairmen’s, construction, mechanics’ or other similar Liens, or landlord Liens specifically created by contract (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided, in each case, pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions, encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person and exceptions on Mortgage Policies insuring Liens granted on Mortgaged Properties;

(7) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clauses (A) or (B) of the definition of Permitted Ratio Debt, clause (4), (12)(b), (13), (14)(a)(A), (14)(a)(B), (15), (23) or (31) of Section 7.02(b) or, with respect to assumed or acquired Indebtedness not incurred in contemplation of the relevant acquisition, Disqualified Stock or Preferred Stock, clause (14)(b) of Section 7.02(b); provided that:

(a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (13) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness, Disqualified Stock or Preferred Stock incurred under clause (4), (12) or (13) of Section 7.02(b);
(b) Liens securing obligations relating to Indebtedness or Disqualified Stock permitted to be incurred pursuant to such clause (23) or
(31) extend only to the assets of Subsidiaries that are not Guarantors;

(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to
such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; provided further
that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such
counterparty;

(d) If any such Liens secure Indebtedness for borrowed money incurred pursuant to clauses (A) or (B) of the definition of Permitted
Ratio Debt or such clauses (12)(b), (14)(a)(A) or (14)(a)(B), at the election of the Borrower, such Liens shall be subject to the applicable
Intercreditor Agreement(s); and

(e) Liens securing obligations in respect of assumed or acquired Indebtedness, Disqualified Stock or Preferred Stock not incurred in
contemplation of the relevant acquisition permitted to be assumed pursuant to such clause (14) are solely on acquired property or the assets
of the acquired entity (other than after acquired property that is (A) affixed or incorporated into the property covered by such Lien,
(B) after acquired property subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of
after acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such
requirement would not have applied but for such acquisition) and (C) the proceeds and products thereof).

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (provided that any such Lien securing obligations
in an aggregate amount on the Closing Date in excess of $18.75 million shall be set forth on Schedule 7.01);

(9) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary; provided that such Liens
are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary;

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets,
including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary (provided
that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation)
and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement,
extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any
property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Borrower or another
Restricted Subsidiary permitted to be incurred in accordance with Section 7.02;
(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s accounts payable or similar obligations in respect of bankers’ acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower’s or any Restricted Subsidiary’s products, technologies or services) (i) that do not either (a) materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness and (ii) licenses or sublicenses granted by Holdings or any of its Restricted Subsidiaries to customers in the ordinary course of business;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility and Liens on any receivables transferred in connection with a Receivables Financing Transaction, including Liens on such receivables resulting from precautionary UCC filings or from recharacterization or any such sale as a financing or a loan;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (6), (7), (8), (9), (10) or this clause (19) of this definition; provided that: (a) such new Lien will be limited to all or part of the same property that was subject to the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and (b) the Indebtedness, Disqualified Stock or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness, Disqualified Stock or Preferred Stock described under such clauses (6), (7), (8), (9), (10) or this clause (19) at the time the original Lien became a Permitted Lien hereunder, plus (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, plus (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock;
(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) $337.5 million and (ii) 43.75% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a pro forma basis), which, at the election of the Borrower, shall be subject to the applicable Intercreditor Agreement(s); it being agreed that the Basket set forth in this clause (21) shall be deemed to be utilized to secure any secured Indebtedness incurred pursuant to Section 2.14 in connection with the utilization of the General Debt Basket Reallocation Amount;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) Liens in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; provided that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depositary relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;
(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04;

(31) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) Liens in connection with any Sale-Leaseback Transaction(s);

(33) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(34) any interest or title of a lessor, sublessor, licensor or sublicensee or secured by a lessor’s, sublessor’s, licensor’s or sublicensee’s interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower’s or such Subsidiary’s obligations under the terms of the lease for such premises;

(36) rights of set-off, banker’s liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; provided that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(39) Liens on all or any portion of the Collateral (but no other assets) to secure obligations in respect of (a) Indebtedness permitted to be incurred pursuant to Section 7.02; provided that after giving pro forma effect to the incurrence of the then proposed Indebtedness (and without netting any cash received from the incurrence of such proposed Indebtedness), (i) if such Indebtedness is secured on a (x) senior lien basis to the Liens that secure the Second Lien Obligations under this Agreement ("Senior Lien Debt"), the First Lien Net Leverage Ratio would be no greater than 4.50 to 1.00 or (y) pari passu basis with the Liens that secure the
Second Lien Obligations under this Agreement ("Pari Passu Lien Debt") or junior basis to the Liens that secure the Second Lien Obligations under this Agreement ("Junior Lien Debt"), the Secured Net Leverage Ratio would be no greater than 5.50 to 1.00, (ii) such Liens are in each case subject the applicable Intercreditor Agreement(s) and (iii) if such Liens secure syndicated Dollar-denominated term loans that are Pari Pass Lien Debt, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(b) (to the extent then applicable) as if such Indebtedness were Incremental Loans incurred pursuant to Section 2.14 and (b) any Refinancing Indebtedness in respect of Senior Lien Debt, Pari Pass Lien Debt or Junior Lien Debt (but subject to the foregoing clause (iii));

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by any title insurance reports or policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; provided that the covenants are complied with;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning, building and other similar land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(47) Liens securing obligations under Indebtedness outstanding pursuant to Section 7.02(b)(2);

(48) Liens on all or any portion of the Collateral (but no other assets) securing (i) Permitted Incremental Equivalent Debt, (ii) Permitted Equal Priority Refinancing Debt or (iii) Permitted Junior Priority Refinancing Debt, and, in each case, Liens securing any Refinancing Indebtedness in respect thereof;
Liens on the assets of Restricted Subsidiaries that are not Loan Parties securing Indebtedness or other obligations of such Restricted Subsidiaries or any other Restricted Subsidiaries that are not Loan Parties that is permitted by Section 7.02 or otherwise not prohibited by this Agreement;

Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable Law; and

Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose.

For purposes of this definition, the term “Indebtedness” will be deemed to include interest and other obligations payable on or with respect to such Indebtedness.

“Permitted Parent” means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

“Permitted Ratio Debt” has the meaning specified in Section 7.02(a).

“Permitted Unsecured Refinancing Debt” means unsecured Indebtedness incurred by the Borrower and/or the Guarantors in the form of one or more series of senior unsecured notes, bonds or debentures or unsecured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); provided that (i) such Indebtedness satisfies the applicable requirements set forth in the provisos in the definition of “Credit Agreement Refinancing Indebtedness” and (ii) such Indebtedness is not at any time guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower’s or a Parent Company’s common equity sold by the Borrower or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained 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 of their respective ERISA Affiliates.

“Planned Expenditures” has the meaning specified in the definition of Excess Cash Flow.

“Platform” has the meaning specified in Section 6.02.

“Pledged Collateral” has the meaning specified in the Security Agreement.
“Preferred Stock” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

“Private-Side Information” means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

“Pro Forma Financial Statements” has the meaning specified in Section 5.05(1)(b).

“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 Loans of such Lender at such time and the denominator of which is the amount of the Loans at such time; provided that when used with respect to Commitments, Loans and interest under any Facility, “Pro Rata Share,” shall mean, 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 Commitments and Loans of such Lender under such Facility at such time and the denominator of which is the amount of the aggregate Commitments and Loans under such Facility at such time.

“Public Company Costs” means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower’s or its Restricted Subsidiaries’ initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

“Public Lender” has the meaning specified in Section 6.02.

“Public-Side Information” means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of United States federal and state securities laws), and (ii) at any time on and after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of United States federal and state securities laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

“Purchase Money Obligations” means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

“Qualified Proceeds” means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.
“Qualified Securitization Facility” means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Borrower) or (2) constituting a receivables financing facility.

“Qualifying IPO” means the issuance by the Borrower or any Parent Company of its common Equity Interests that are listed on a national exchange or publicly offered (other than a public offering pursuant to a registration statement on Form S-8) (including pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering)).

“Qualifying Lender” has the meaning specified in Section 2.05(1)(e)(D)(3).

“Quarterly Financial Statements” means the unaudited consolidated balance sheets and related consolidated combined statements of operations and cash flows of the Borrower and its Subsidiaries for the commencing April 3, 2017 and ended July 1, 2017.

“Rating Agencies” means Moody’s and S&P, or if Moody’s or S&P (or both) does not make a rating on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody’s or S&P (or both), as the case may be.

“Receivables Financing Transaction” means any transaction or series of transactions entered into by Holdings, the Borrower or any Restricted Subsidiary pursuant to which such party consummates a “true sale” of its receivables to a non-related third party on market terms as determined in good faith by the Borrower; provided that such Receivables Financing Transaction is (i) non-recourse to Holdings, the Borrower and the Restricted Subsidiaries and their assets, other than any recourse solely attributable to a breach by Holdings, the Borrower or any Restricted Subsidiary of representations and warranties that are customarily made by a seller in connection with a “true sale” of receivables on a non-recourse basis and (ii) consummated pursuant to customary contracts, arrangements or agreements entered into with respect to the “true sale” of receivables on market terms for similar transactions.

“Reference Rate” means (x) with respect to the calculation of the All-In Yield in the case of Loans of an applicable Class that includes a Eurodollar Rate floor, an interest rate per annum equal to the rate per annum equal to LIBOR, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, on such day for Dollar deposits with a term of three months, or if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on such day with a term of three months would be offered by the Administrative Agent’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m., London time, on such date and (y) with respect to the calculation of the All-In Yield in the case of Loans of an applicable Class that includes a Base Rate floor, the interest rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate” and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day).
“Refinance” has the meaning assigned in the definition of “Refinancing Indebtedness” and “Refinancing” and “Refinanced” have meanings correlative to the foregoing.

“Refinanced Debt” has the meaning assigned to such term in the definition of “Refinancing Indebtedness.”

“Refinancing Amendment” means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Other Loans or Other Commitments being incurred or provided pursuant thereto, in accordance with Section 2.15.

“Refinancing Indebtedness” means (x) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (y) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease (“Refinance”) any Indebtedness, Disqualified Stock or Preferred Stock, including any Refinancing Indebtedness, so long as:

1. the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the “Refinanced Debt”), plus (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, plus (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the “Incremental Amounts”);

2. such Refinancing Indebtedness (other than in the case of the Refinancing of any Indebtedness assumed or acquired in connection with any Permitted Acquisition, Investment or similar transaction so long as not created in contemplation thereof), has a:

   a. Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

   b. final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the Latest Maturity Date of the Loans);

3. to the extent such Refinancing Indebtedness Refinances (a) Indebtedness that is contractually subordinated in right of payment to the Obligations (other than such Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 7.05, such Refinancing Indebtedness is subordinated to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt, (b) Junior Lien Debt, such Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Loans or the...
Guaranty thereof, in each case at least to the same extent as the applicable Refinanced Debt or pursuant to an Intercreditor Agreement, in each case, unless such Refinancing Indebtedness is secured by a Lien that is not so subordinated that is permitted by Section 7.01, or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property);

provided that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refines Indebtedness or Disqualified Stock of the Borrower;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refines Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinaces Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

provided further that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under clause (30) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Junior Indebtedness (other than Junior Indebtedness assumed or acquired in an Investment, acquisition or similar transaction and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (2) of this definition).

“Refunding Capital Stock” has the meaning specified in Section 7.05(b)(2).

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

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Rejection Notice” has the meaning specified in Section 2.05(2)(g).
“Related Business Assets” means assets (other than Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Restricted Subsidiary.

“Related Indemnified Person” of an Indemnitee means (1) any controlling Person or controlled Affiliate of such Indemnitee, (2) the respective directors, officers, partners, employees, advisors or successors of such Indemnitee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnitee or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling Person or such controlled Affiliate; provided that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or the syndication of the Facilities. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Related Person” means, with respect to any Person, (a) any Affiliate of such Person, (b) the respective directors, officers, partners, employees, advisors, agents, trustees and other representatives of such Person or any of its Affiliates and (c) the successors and permitted assigns of such Person or any of its Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into or migration through the Environment.

“Replaced Loans” has the meaning specified in Section 10.01.

“Replacement Loans” has the meaning specified in Section 10.01.

“Reportable Event” means, with respect to any Pension 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 Facility Lenders” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of (a) the Outstanding Amount under such Facility or Facilities and (b) the aggregate unused Commitments under such Facility or Facilities; provided that, to the same extent specified in Section 10.07(i) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Facility Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Commitments; provided that the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders.

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“Responsible Officer” means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such 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 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. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“Restricted Investment” means any Investment other than any Permitted Investment(s).

“Restricted Payment” has the meaning specified in Section 7.05.

“Restricted Subsidiary” means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; provided that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Restricted Subsidiary for purposes of Section 8.01(5), (6) or (7); provided further that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of “Restricted Subsidiary.” Wherever the term “Restricted Subsidiary” is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a pro forma basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower (unless such transaction would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a pro forma basis in accordance with this Agreement).


“Sale-Leaseback Transaction” means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“Same Day Funds” means disbursements and payments in immediately available funds.

“Sanctions” has the meaning specified in Section 5.17.

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

“Second Lien Obligations” means the Obligations, the Permitted Incremental Equivalent Debt and the Credit Agreement Refinancing Indebtedness, in each case, that are, or purport to be, secured by the Collateral on an equal priority basis (but without regard to the control of remedies) with liens on the Collateral securing the Initial Loans. For the avoidance of doubt, the Second Lien Obligations shall include the Initial Loans.
“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between Holdings, the Borrower or any Restricted Subsidiary and a Cash Management Bank; and designated in writing by the Borrower to the Administrative Agent as a “Secured Cash Management Agreement”, unless such Cash Management Agreement constitutes a “Secured Cash Management Agreement” as defined in, and under, the First Lien Credit Agreement prior to the First Lien Credit Agreement Termination Date.

“Secured Hedge Agreement” means any Hedge Agreement with respect to Hedging Obligations permitted under Section 7.02 that is (a) entered into by and between any Loan Party or Restricted Subsidiary and any Hedge Bank and (b) designated in writing by the Borrower to the Administrative Agent as a “Secured Hedge Agreement”, unless such Hedge Agreement constitutes a “Secured Hedge Agreement” as defined in, and under, the First Lien Credit Agreement prior to the First Lien Credit Agreement Termination Date.

“Secured Indebtedness” means any Indebtedness of the Borrower or any Restricted Subsidiary secured by a Lien.

“Secured Net Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding as of the last day of such Test Period, minus the Unrestricted Cash Amount on such last day to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

“Secured Parties” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Hedge Bank, each Cash Management Bank, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(2) or 9.07.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Securitization Assets” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“Securitization Facility” means any transaction or series of securitization financings that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“Securitization Subsidiary” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.
“Security Agreement” means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

“Senior Lien Debt” has the meaning specified in clause (39) of the definition of “Permitted Liens”.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

“Similar Business” means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date.

“Solicited Discount Proration” has the meaning specified in Section 2.05(1)(e)(D)(3).

“Solicited Discounted Prepayment Amount” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Solicited Discounted Prepayment Notice” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(1)(e)(D) substantially in the form of Exhibit L.

“Solicited Discounted Prepayment Offer” means the written offer by each Lender, substantially in the form of Exhibit O, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“Solicited Discounted Prepayment Response Date” has the meaning specified in Section 2.05(1)(e)(D)(1).

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date:
(1) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,
(2) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured,
(3) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and
(4) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

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The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

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

“Specified Discount” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Discount Prepayment Amount” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Discount Prepayment Notice” means a written notice of the Borrower’s Offer of Specified Discount Prepayment made pursuant to Section 2.05(1)(e)(B) substantially in the form of Exhibit N.

“Specified Discount Prepayment Response” means the written response by each Lender, substantially in the form of Exhibit P, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning specified in Section 2.05(1)(e)(B)(1).

“Specified Discount Proration” has the meaning specified in Section 2.05(1)(e)(B)(3).

“Specified Representations” means those representations and warranties made in Sections 5.01(1) (with respect to the organizational existence of the Loan Parties only), 5.01(2)(b), 5.02(1), 5.02(2)(a), 5.04, 5.13, 5.16, the last sentence of Section 5.17 (as it relates only to the use of proceeds of the Facilities not violating the USA PATRIOT Act or OFAC), and Section 5.18.

“Specified Transaction” means:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Borrower, in each case, in connection with an acquisition or Investment,

(2) any designation of operations or assets of the Borrower or a Restricted Subsidiary as discontinued operations (as defined under GAAP) (but if such operations are designated as discontinued due to the fact that they are being held for sale or are subject to an agreement to dispose of such operations, if selected by the Borrower in its sole discretion, only when and to the extent such operations are actually disposed of),

(3) any Permitted Acquisition or any Investment that results in a Person becoming a Restricted Subsidiary,

(4) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,

(5) any purchase or other acquisition of a business of any Person, of assets constituting a business unit, line of business or division of any Person,
(6) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Restricted Subsidiary during the Test Period,

(8) any borrowing of Incremental Loans or Permitted Incremental Equivalent Debt (or establishment of Incremental Commitments), or

(9) any Restricted Payment or other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a pro forma basis;

provided that any of the foregoing shall not constitute a Specified Transaction so long as the fair market value or impact, as applicable, thereof shall not exceed $50.0 million.

“Sterling” means the lawful currency of the United Kingdom.

“Submitted Amount” has the meaning specified in Section 2.05(1)(e)(C)(1).

“Submitted Discount” has the meaning specified in Section 2.05(1)(e)(C)(1).

“Subsidiary” means, with respect to any Person:

(1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor” means any Guarantor other than Holdings.

“Successor Borrower” has the meaning specified in Section 7.03(4).

“Successor Holdings” has the meaning specified in Section 7.03(5).
“Supplemental Administrative Agent” and “Supplemental Administrative Agents” have the meanings specified in Section 9.15(1).

“Swap Obligation” has the meaning specified in the definition of “Excluded Swap Obligation.”

“Tax” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

“Tax Distributions” has the meaning specified in Section 7.05(b)(14)(c).

“Test Period” in effect at any time means (x) for purposes of Section 2.05(2)(a), the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which, subject to Section 1.07(1), financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 6.01(1) or (2), as applicable and (y) for all other purposes in this Agreement, the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each such quarter or fiscal year in such period are internally available (as determined in good faith by the Borrower); provided that, prior to the first date that financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2), the Test Period in effect shall be the period of four consecutive full fiscal quarters of the Borrower ended prior to the Closing Date for which financial statements would have been required to be delivered hereunder had the Closing Date occurred prior to the end of such period.

“Threshold Amount” means $125.0 million.

“Total Assets” means, at any time, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower) (and, in the case of any determination relating to any Specified Transaction, on a pro forma basis including any property or assets being acquired in connection therewith).

“Total Net Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Test Period, minus the Unrestricted Cash Amount on such last day to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans.
"Traded Securities" means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

"Transaction Document" means each of (a) that certain Transition Services Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation (as amended by the First Amendment to the Transition Services Agreement, dated as of August 31, 2017) (the "TSA"), (b) that certain letter agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (c) that certain Intellectual Property Matters Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (d) that certain Security Innovation Alliance Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (e) that certain Software License Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (f) that certain Commercial Services Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (g) that certain Embedded Software Distribution and Services Agreement, dated as of October 1, 2012, among the Borrower, McAfee Ireland Limited (successor in interest to McAfee Security S.a.r.l.), McAfee Co. Ltd., and Intel Corporation (as amended by the First amendment thereto dated May 12, 2013, the Second Amendment thereto dated June 24, 2013, the Third Amendment thereto dated June 24, 2013, the Fourth Amendment thereto dated June 24, 2013, the Fifth Amendment thereto dated January 28, 2016, the Sixth Amendment thereto dated March 15, 2016, and the Seventh Amendment thereto dated April 3, 2017, (h) that certain Master Purchase Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (i) that certain Intellectual Property Assignment, dated as of April 3, 2017 between Foundation Technology Worldwide LLC and Intel Corporation, (j) that certain Corporate Non-Disclosure Agreement for Restricted Secret Information, dated as of April 3, 2017 between Foundation Technology Worldwide LLC and its Affiliates on the one hand and Intel Corporation and its Affiliates on the other hand, (k) that certain Non-Disclosure Agreement for Restricted Secret Information, dated as of April 3, 2017 between Borrower and Intel Corporation, and (l) that certain Side Letter to the Subscription Agreement, dated as of April 2, 2017 among Foundation Technology Worldwide LLC, Manta Holdings, L.P. and Intel Corporation.

"Transaction Expenses" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options or restricted stock.

"Transactions" means, collectively, (a) dividends and distributions to be applied to the repayment, redemption or repurchase of (i) the Promissory Note, dated as of April 3, 2017, among Foundation Technology Worldwide LLC and Intel Overseas Funding Corporation and (ii) the Redemption Units (as defined in the Amended and Restated Limited Liability Company Agreement of Foundation Technology Worldwide LLC, a Delaware limited liability company issued to Manta Holdings, L.P., (b) the repayment, redemption or repurchase of the Revolving Credit Note, dated as of April 3, 2017, among McAfee, LLC and Intel Overseas Funding Corporation (the repayment, redemption or repurchase transactions contemplated by clause (a) and this clause (b), the "Refinancing"), (c) the payment of Transaction Expenses, (d) to the extent of proceeds remaining after the transactions as contemplated by clauses (a), (b) and (c) of this definition, additional dividends and distributions paid to Foundation Technology Worldwide LLC and further to its direct and indirect members (the "Parent Distribution") and (e) transactions related or incidental to, or in connection with, such transactions.

"Treasury Capital Stock" has the meaning assigned to such term in Section 7.05(b)(2)(a).
“TSA” has the meaning assigned to such term in the definition of “Transaction Document”.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the perfection or priority of any Lien on or otherwise with regard to any item or items of Collateral.

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

“United States Tax Compliance Certificate” has the meaning specified in Section 3.01(3)(b)(iii).

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the perfection or priority of any Lien on or otherwise with regard to any item or items of Collateral.

“Unrestricted Cash Amount” means, on any date of determination, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) are restricted in favor of the Facilities (which may also secure other Indebtedness secured by a senior, pari passu or junior Lien basis with the Facilities).

“Unrestricted Subsidiary” means:

(1) any Subsidiary of the Borrower which at the time of determination is an Unrestricted Subsidiary (as designated by the Borrower, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Borrower may designate:

(a) any Subsidiary of the Borrower (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Borrower or any Subsidiary (other than solely any Subsidiary of the Subsidiary to be so designated); provided that:

(i) such designation shall be deemed an Investment;

(ii) each of (i) the Subsidiary to be so designated and (ii) its Subsidiaries has not, at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Borrower or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary); and

(iii) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and
(b) any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that:

(i) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(ii) either (x) the First Lien Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis does not exceed 6.55 to 1.00 or (y) such designation is made under the First Lien Credit Agreement pursuant to the definition of “Unrestricted Subsidiary” therein.

Any such designation by the Borrower will be notified by the Borrower to the Administrative Agent by promptly filing with the Administrative Agent an Officer’s Certificate certifying that such designation complied with the foregoing provisions. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time.

“U.S. Lender” means any Lender that is not a Foreign Lender.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

1. the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, multiplied by the amount of such payment,

2. the sum of all such payments;

provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness (the “Applicable Indebtedness”), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of such determination will be disregarded.

“wholly owned” means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors’ qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

“Withdrawal Liability” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.
“Withholding U.S. Branch” means a U.S. branch of a non-U.S. bank treated as a U.S. person for purposes of Treasury Regulations Section 1.1441-1 and described in Treasury Regulations Section 1.1441-1(b)(2)(iv) that agrees, on IRS Form W-8IMY or such other form prescribed by the Treasury or the IRS, to accept responsibility for all U.S. federal income tax withholding and information reporting with respect to payments made to the Administrative Agent for the account of Lenders by or on behalf of any Loan Party under the Loan Documents.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

“Yen” means the lawful currency of Japan.

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:

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

(2) 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.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

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

(5) 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.

(6) 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.”

(7) 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.

(8) The word “or” is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words “exists,” “is continuing” or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived. If any Default or Event of Default occurs due to (i) the failure by any Loan Party to take any action by a specified time, such Default or Event of Default shall be deemed to have been cured at the time, if any, that the applicable Loan Party takes such action or (ii) the taking of any action by any Loan Party that is not then permitted by the terms of this Agreement or any
other Loan Document, such Default or Event of Default shall be deemed to be cured on the earlier to occur of (x) the date on which such action would be permitted at such time to be taken under this Agreement and the other Loan Documents and (y) the date on which such action is unwound or otherwise modified to the extent necessary for such revised action to be permitted at such time by this Agreement and the other Loan Documents. If any Default or Event of Default occurs that is subsequently cured (a “Cured Default”), any other Default or Event of Default resulting from the making or deemed making of any representation or warranty by any Loan Party or the taking of any action by any Loan Party or any Subsidiary of any Loan Party, in each case which subsequent Default or Event of Default would not have arisen had the Cured Default not occurred, shall be deemed to be cured automatically upon, and simultaneous with, the cure of the Cured Default.

Notwithstanding anything to the contrary in this Section 1.02(9), an Event of Default (the “Initial Default”) may not be cured pursuant to this Section 1.02(9):

(a) if the taking of any action by any Loan Party or Subsidiary of a Loan Party that is not permitted during, and as a result of, the continuance of such Initial Default (including, without limitation, a Credit Extension hereunder at a time when the conditions thereto have not been met and the application of proceeds thereof) directly results in the cure of such Initial Default and the applicable Loan Party or Subsidiary had actual knowledge at the time of taking any such action that the Initial Default had occurred and was continuing,

(b) in the case of an Event of Default under Section 8.01(9) [Invalidity of Loan Documents] or (10) [Collateral Documents (Loss of Lien)] that directly results in material impairment of the rights and remedies of the Lenders, Collateral Agent and Administrative Agent under the Loan Documents and that is incapable of being cured, or

(c) in the case of an Event of Default under Section 8.01(3) [Affirmative Covenant Event of Default] arising due to the failure to perform or observe Section 6.07 [Maintenance of Insurance] that directly results in a material adverse effect on the ability of the Borrower and the other Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which the Borrower or any of the other Loan Parties is a party; or

(d) in the case of an Initial Default for which (i) the Borrower failed to give notice to the Agent and the Lenders of such Initial Default in accordance with Section 6.03(1) of this Agreement and (ii) the Borrower had actual knowledge of such failure to give such notice.

(10) For purposes hereof, unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

SECTION 1.03 Accounting Terms. 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, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any of its Subsidiaries at “fair value,” as defined therein and (ii) unless the Borrower has requested an amendment pursuant to the second
paragraph of the definition of “GAAP” with respect to the treatment of operating leases and Capitalized Lease Obligations under GAAP (or IFRS) and until such amendment has become effective, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

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, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) 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 and Timing of Payment and Performance. Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) 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 (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.07; provided that notwithstanding anything to the contrary in clauses (2), (3), (4) or (5) of this Section 1.07, when calculating the Secured Net Leverage Ratio for purposes of Section 2.05(2)(a), the events described in this Section 1.07 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect; provided however that voluntary prepayments made pursuant to Section 2.05(1) during any fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to Section 2.05(2)(a) for any prior fiscal year) shall be given pro forma effect after such fiscal year-end and prior to the time any mandatory prepayment pursuant to Section 2.05(2)(a) is due for purposes of calculating the Secured Net Leverage Ratio for purposes of determining the ECF Percentage for such mandatory prepayment, if any.

(2) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified
Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Consolidated EBITDA or Total Assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.07; provided that with respect to any pro forma calculations to be made in connection with any acquisition or investment in respect of which financial statements for the relevant target are not available for the same Test Period for which internal financial statements of the Borrower are available, the Borrower shall determine such pro forma calculations on the basis of the available financial statements (even if for differing periods) or such other basis as determined on a commercially reasonable basis by the Borrower.

(3) Whenever pro forma effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from or relating to any Specified Transaction (including the Original Transactions and, for the avoidance of doubt, acquisitions occurring prior to the Closing Date) which is being given pro forma effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements), whether prior to or following the Closing Date, net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial pro forma calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized relating to such Specified Transaction; provided that (a) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (b) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than eighteen (18) months after the date of such Specified Transaction (or actions undertaken or implemented prior to the consummation of such Specified Transaction) and (c) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a pro forma adjustment or otherwise, with respect to such period; provided, that the aggregate amount of any such “run rate” adjustments added back pursuant to this Section 1.07 and clause (l) of the definition of “Consolidated EBITDA” shall not exceed in the aggregate 25.0% of Consolidated EBITDA for such period (as calculated before giving effect to any such “run rate” adjustments).

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced and, for the avoidance of doubt, in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued, any Lien is incurred
or other transaction is undertaken in reliance on a ratio Basket based on the Interest Coverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio, such ratio(s) shall be calculated without regard to the incurrence of any Indebtedness under any revolving facility in connection therewith, (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Interest Coverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period.

(5) If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or applicable Restricted Subsidiary may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, at the election of the Borrower, no pro forma effect shall be given to any discontinued operations (and the Consolidated EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) on or prior to the relevant date of determination.

(8) Notwithstanding anything to the contrary contained herein, in the event any item of Indebtedness (including any Class of Indebtedness incurred under this Agreement (including pursuant to Section 2.14)), Disqualified Stock or Preferred Stock, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (or any of the foregoing in a single transaction or a series of substantially concurrent related transactions) meets the criteria of one or more than one of the categories of Baskets under this Agreement (including within any defined terms), including any financial ratio based Baskets (including the Interest Coverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio), (i) unless otherwise expressly provided in this Agreement, the Borrower may, in its sole discretion, divide and classify and later re-divide and reclassify on or more
occasions (based on circumstances existing on the date of any such re-division and reclassification) any such item of Indebtedness (including any Class of Indebtedness incurred under this Agreement (including pursuant to Section 2.14)), Disqualified Stock or Preferred Stock, Lien, Restricted Payment, Permitted Investment or other transaction or action, in whole or in part, among one or more than one categories of Baskets under this Agreement, and (ii) availability and utilization of any category of financial ratio based Baskets (i.e., incurrence-based Baskets) with respect to any covenant (and including clause (D) of the Available Incremental Amount for purposes hereof) shall first be calculated without giving effect to the amount or portion of any item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action to be utilized under any other category of Baskets under such covenant (or the Available Incremental Amount, as applicable) at such time of determination (including at the time of any initial division and classification and any later re-divisions and reclassifications) and thereafter, availability and utilization of any category of Baskets that are not financial ratio based (including all Baskets based on fixed Dollar amounts or a percentage of Consolidated EBITDA or total assets under such covenant (including, as applicable, under clause (A)(1) of the Available Incremental Amount)) shall be calculated; provided that all Indebtedness (x) incurred hereunder on the Closing Date and (y) represented by the Indebtedness pursuant to the First Lien Credit Documents and related Guarantees on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (2), respectively, and may not be reclassified. Each item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action will be deemed to have been incurred, issued, made or taken first, to the extent available, pursuant to any available categories of financial ratio based Baskets (including the Interest Coverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio) as set forth above prior to any other category of Baskets. If any item of Indebtedness (including any Class of Indebtedness incurred under this Agreement (including pursuant to Section 2.14)), Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (or any portion of the foregoing) previously divided and classified (or re-divided and reclassified) as set forth above under any category of non-financial ratio based Baskets could subsequently be re-divided and reclassified under a category of financial ratio based Baskets (including the Interest Coverage Ratio, Senior Secured Net Leverage Ratio or Total Net Leverage Ratio (including clause (D) of the Available Incremental Amount)), such re-division and reclassification shall be deemed to occur automatically and item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Permitted Lien, Restricted Payment, Permitted Investment or other transaction or action (or any portion of the foregoing) shall cease to be deemed made or outstanding for purposes of any category of Baskets that are not financial ratio based.

(9) If any item of Indebtedness, Disqualified Stock or Preferred Stock, Lien, Restricted Payment, Permitted Investment or other transaction or action (any of the foregoing in a single transaction or a series of substantially concurrent related transactions) is incurred, issued, taken or consummated in reliance on categories of Baskets measured by reference to a percentage of Consolidated EBITDA, and any Indebtedness, Disqualified Stock or Preferred Stock, Lien, Restricted Payment, Permitted Investment or other transaction or action (including in connection with refinancing thereof) would subsequently exceed the applicable percentage of Consolidated EBITDA if calculated based on the Consolidated EBITDA on a later date (including the date of any refinancing), such percentage of Consolidated EBITDA will not be deemed to be exceeded (and in the case of refinancing any Indebtedness, Disqualified Stock or Preferred Stock, to the extent the principal amount or the liquidation preference of such newly incurred or issued Indebtedness, Disqualified Stock or Preferred Stock does not exceed the maximum principal amount, liquidation preference or amount of Refinancing Indebtedness in respect of the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased).
(10) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (a) calculating the availability under any Basket or ratio in this Agreement (including the Available Incremental Amount) or compliance with any provision of in this Agreement in connection with any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness (including pursuant to Section 2.14), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments), in each case, at the option of the Borrower (the Borrower’s election to exercise such option, an “LCT Election”), the date of determination for availability under any such Basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any (or any type of) continuing Default or Event of Default and satisfaction of any representations and warranties)) in this Agreement shall be deemed to be the date (the “LCT Test Date”) the definitive agreements for such Limited Condition Transaction are entered into (or, if applicable, the date of delivery of an irrevocable notice, declaration of a Restricted Payment or similar event), and if, after giving pro forma effect to the Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness (including pursuant to Section 2.14), Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments) and any related pro forma adjustments, the Borrower or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued or incurred at the LCT Test Date or at any time thereafter); provided that (a) if financial statements for one or more subsequent fiscal quarters shall have become available, the Borrower may elect, in its sole discretion, to re-determine all such ratios, tests or baskets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be deemed to be the applicable LCT Test Date for purposes of such ratios, tests or baskets, and (b) except as contemplated in the foregoing clause (a), compliance with such ratios, tests or baskets (and any related requirements and conditions) shall not be determined or tested at any time after the applicable LCT Test Date for such Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments and Restricted Payments).

For the avoidance of doubt, if the Borrower has made an LCT Election, (1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time after the LCT Test Date have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA or total assets of the Borrower or the Person subject to such Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations; (2) if any related requirements and conditions (including as to the absence of any (or any type of) continuing Default or Event of Default and satisfaction of any representations and warranties) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time after the LCT Test Date not have been complied with or satisfied (including due to the occurrence or continuation of any Default or Event of Default or failure to satisfy any representations and warranties), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing and such representations and warranties shall be deemed to have been satisfied); and (3) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or date for redemption, purchase or repayment specified in an irrevocable notice or declaration for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Transaction.
SECTION 1.08 Available Amount Transaction. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount specified in clause (3) of Section 7.05(a) immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must be permitted under clause (3) of Section 7.05(a) as so calculated.

SECTION 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

SECTION 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the Dollar equivalent amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

Article II

The Commitments and Borrowings

SECTION 2.01 The Loans.

(1) Borrowings. Subject to the terms and conditions set forth in Section 4.01 hereof, each Lender severally agrees to make to the Borrower on the Closing Date one or more Initial Loans denominated in Dollars in an aggregate principal amount equal to such Lender’s Closing Date Commitment on the Closing Date. Amounts borrowed under this Section 2.01(1) and repaid or prepaid may not be reborrowed. The Initial Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.
(1) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower’s irrevocable notice, on behalf of the Borrower, to the Administrative Agent (provided that the notice in respect of the initial Borrowing, or in connection with any Permitted Acquisition or other transaction permitted under this Agreement, may be conditioned on the closing of such Permitted Acquisition or other transaction, as applicable), which may be given by: (A) telephone or (B) a Committed Loan Notice; provided that any telephonic notice by the Borrower must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than (a) 1:00 p.m., New York time, three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurodollar Rate Loans or any conversion of Base Rate Loans to Eurodollar Rate Loans and (b) 1:00 p.m., New York time, on the requested date of any Borrowing of Base Rate Loans or any conversion of Eurodollar Rate Loans to Base Rate Loans; provided that the notice referred to in subclause (a) above may be delivered not later than 1:00 p.m., New York time, one (1) Business Day prior to the Closing Date in the case of the Initials Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(1) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $1.0 million or a whole multiple amount of $250,000 in excess thereof. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple amount of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify

(i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other or a continuation of Eurodollar Rate Loans,

(ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),

(iii) the principal amount of Loans to be borrowed, converted or continued,

(iv) the Class and Type of Loans to be borrowed or to which existing Loans are to be converted,

(v) if applicable, the duration of the Interest Period with respect thereto and

(vi) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as Eurodollar Rate Loans with an Interest Period of one (1) month. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a Eurodollar Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.
(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Eurodollar Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent’s Office not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 3:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4 for any Borrowing, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (a) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (b) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(3) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Facility Lenders under the applicable Facility may require by notice to the Borrower that no Loans under such Facility may be converted to or continued as Eurodollar Rate Loans.

(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. The determination of the Eurodollar Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent’s prime rate used in determining the Base Rate promptly following the announcement of such change.

(5) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; provided that after the establishment of any new Class of Loans pursuant to an Incremental Amendment, a Refinancing Amendment, an Extension Amendment or an amendment in respect of Replacement Loans, the number of Interest Periods otherwise permitted by this Section 2.02(5) shall increase by three (3) Interest Periods for each applicable Class so established.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loans, prior to 1:30 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share and such other applicable share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower
severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from
the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the
Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate plus
any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the
Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of
manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the
Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such
Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then
the amount so paid shall constitute such Lender’s Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any
claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

SECTION 2.03 [Reserved].

SECTION 2.04 [Reserved].

SECTION 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any
Class or Classes of Loans in whole or in part without premium (except as set forth in Section 2.18) or penalty, provided
that

(i) such notice must be received by the Administrative Agent not later than (A) 1:00 p.m., New York time, three (3) Business Days prior to
any date of prepayment of Eurodollar Rate Loans and (B) 12:00 p.m., New York time, on the date of prepayment of Base Rate Loans;

(ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $1.0 million or a whole multiple of $250,000 in excess
thereof or, if less, the entire principal amount thereof then outstanding; and

(iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if
less, the entire principal amount thereof then outstanding.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The
Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender’s Pro Rata
Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such
notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest
thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this
Section 2.05(1), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be
repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares.
(b) [Reserved]

c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind (or delay the date of prepayment identified in) any notice of prepayment under Section 2.05(1)(a) by written notice to the Administrative Agent not later than 12:00 p.m., New York time, on such prepayment date if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed.

d) Each prepayment in respect of any Loans pursuant to this Section 2.05 may be applied to any Class of Loans as directed by the Borrower. For the avoidance of doubt, the Borrower may (i) prepay Loans of an Existing Loan Class pursuant to this Section 2.05 without any requirement to prepay Extended Loans that were converted or exchanged from such Existing Loan Class and (ii) prepay Extended Loans pursuant to this Section 2.05 without any requirement to prepay Loans of an Existing Loan Class that were converted or exchanged for such Extended Loans. In the event that the Borrower does not specify the order in which to apply prepayments or as between Classes of Loans, the Borrower shall be deemed to have elected that such proceeds be applied on a pro rata basis among Loan Classes.

e) Notwithstanding anything in any Loan Document to the contrary, so long as no Event of Default has occurred and is continuing, any Borrower Party may (i) purchase outstanding Loans on a non-pro rata basis through open market purchases or (ii) prepay the outstanding Loans (which Loans shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such purchase or prepayment), which in the case of clause (ii) only shall be prepaid without premium or penalty on the following basis:

   (A) Any Borrower Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “Discounted Loan Prepayment”), in each case made in accordance with this Section 2.05(1)(e) and without premium or penalty.

   (B) (1) Any Borrower Party may from time to time offer to make a Discounted Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice (or such shorter period as agreed by the Auction Agent) in the form of a Specified Discount Prepayment Notice; provided that (I) any such offer shall be made available, at the sole discretion of the applicable Borrower Party, to (x) each Lender or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “Specified Discount Prepayment Amount”) with respect to each applicable Class, the Class or Classes of Loans subject to such offer and the specific percentage discount to par (the “Specified Discount”) of such Loans to be prepaid (it being understood that different Specified Discounts or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the “Specified Discount Prepayment Response Date”).
(2) Each Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Loans at the Specified Discount and, if so (such accepting Lender, a “Discount Prepayment Accepting Lender”), the amount and the Classes of such Lender’s Loans to be prepaid at such offered discount. Each acceptance of a Discounted Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the relevant Borrower Party will make a prepayment of outstanding Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and Classes of Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2) above; provided that if the aggregate principal amount of Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “Specified Discount Proration”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the applicable Borrower Party and such Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Borrower Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days’ notice (or such shorter period as agreed by the Auction Agent) in the form of a Discount Range Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Lender or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Loans (the “Discount Range Prepayment Amount”), the Class or Classes of Loans subject to such offer and the maximum and minimum percentage discounts to par (the “Discount Range”) of the principal amount of such Loans with respect to each relevant Class of Loans willing to be prepaid by such Borrower Party (it being understood that different Discount Ranges or
Discount Range Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the “Discount Range Prepayment Response Date”). Each Lender’s Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the “Submitted Discount”) at which such Lender is willing to allow prepayment of any or all of its then outstanding Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender’s Loans (the “Submitted Amount”) such Lender is willing to have prepaid at the Submitted Discount. Any Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Loan Prepayment of any of its Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Borrower Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “Applicable Discount”) which yields a Discounted Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Lender, a “Participating Lender”).

(3) If there is at least one Participating Lender, the relevant Borrower Party will prepay the respective outstanding Loans of each Participating Lender in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; provided that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “Identified Participating Lenders”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Borrower Party and
subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “Discount Range Proration”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, the aggregate principal amount of the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, the Applicable Discount and the aggregate principal amount and Classes of Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Lender to be prepaid at the Applicable Discount on such date and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Borrower Party and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Any Borrower Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days’ notice in the form of a Solicited Discounted Prepayment Notice (or such later notice specified therein); provided that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Lender or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Loans (the “Solicited Discounted Prepayment Amount”) and the Class or Classes of Loans the applicable Borrower Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than $5.0 million and whole increments of $1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the “Solicited Discounted Prepayment Response Date”). Each Lender’s Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date and (z) specify both a discount to par (the “Offered Discount”) at which such Lender is willing to allow prepayment of its then outstanding Loan and the maximum aggregate principal amount and Classes of such Loans (the “Offered Amount”) such Lender is willing to have prepaid at the Offered Discount. Any Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Borrower Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Borrower Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the
relevant responding Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the applicable Borrower Party (the “Acceptable Discount”), if any. If the applicable Borrower Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Borrower Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “Acceptance Date”), the applicable Borrower Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the applicable Borrower Party by the Acceptance Date, such Borrower Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “Discounted Prepayment Determination Date”), the Auction Agent will determine (with the consent of such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Loans (the “Acceptable Prepayment Amount”) to be prepaid by the relevant Borrower Party at the Acceptable Discount in accordance with this Section 2.05(1)(e)(D). If the applicable Borrower Party elects to accept any Acceptable Discount, then such Borrower Party agrees to accept all Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “Qualifying Lender”). The applicable Borrower Party will prepay outstanding Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; provided that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “Identified Qualifying Lenders”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “Solicited Discount Proration”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Borrower Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Loans and the Classes to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower Party and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).
(E) In connection with any Discounted Loan Prepayment, the Borrower Parties and the Lenders acknowledge and agree that the Auction Agent may require, as a condition to the applicable Discounted Loan Prepayment, the payment of customary fees and expenses from a Borrower Party to such Auction Agent for its own account in connection therewith.

(F) If any Loan is prepaid in accordance with subsections (B) through (D) above, a Borrower Party shall prepay such Loans on the Discounted Prepayment Effective Date. The relevant Borrower Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent’s Office in immediately available funds not later than 12:00 p.m., New York time, on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the relevant Class(es) of Loans and Lenders as specified by the applicable Borrower Party in the applicable offer. The Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Loans pursuant to this Section 2.05(1)(e) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective applicable share as calculated by the Auction Agent in accordance with this Section 2.05(1)(e) and, if the Administrative Agent is not the Auction Agent, the Administrative Agent shall be fully protected in relying on such calculations of the Auction Agent. The aggregate principal amount of the Classes and installments of the relevant Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(1)(e), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Borrower Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(1)(e), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent’s (or its delegate’s) actual receipt during normal business hours of such notice or communication; provided that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next succeeding Business Day.

(I) Each of the Borrower Parties and the Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(1)(e) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Loan Prepayment provided for in this Section 2.05(1)(e) as well as activities of the Auction Agent.
(J) Each Borrower Party shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(1)(e) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(2) Mandatory.

(a) Subject to the last paragraph of this Section 2.05(2), within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(1) and the related Compliance Certificate has been delivered pursuant to Section 6.02(1), commencing with the delivery of financial statements for the fiscal year ended on or about December 29, 2018, the Borrower shall, subject to clauses (g) and (h) of this Section 2.05(2), prepay, or cause to be prepaid, an aggregate principal amount of Loans (the "ECF Payment Amount") equal to 50% (such percentage as it may be reduced as described below, the "ECF Percentage") of Excess Cash Flow, if any, for the fiscal year covered by such financial statements minus the sum of all voluntary prepayments, repurchase or redemptions of

(i) Loans made pursuant to Sections 2.05(1)(a) and 2.05(1)(e) (in an amount, in the case of prepayments pursuant to Section 2.05(1)(e), equal to the discounted amount actually paid in respect of the principal amount of such Loans and only to the extent that such Loans have been cancelled), and

(ii) First Lien Loans, Credit Agreement Refinancing Indebtedness, "Credit Agreement Refinancing Indebtedness" (as defined in the First Lien Credit Agreement), Permitted Incremental Equivalent Debt, “Permitted Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement), and any other Indebtedness in the form of notes or term or revolving loans, in each case to the extent secured by the Collateral in whole or in part on a senior or pari passu basis with the Second Lien Obligations under this Agreement (but without regard to the control of remedies) (provided, in the case of any prepayments of loans under any revolving credit facility, only to the extent accompanied by a permanent reduction in the corresponding revolving commitments),

in the case of each of the immediately preceding clauses (i) and (ii), made during such fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to this Section 2.05(2)(a) for any prior fiscal year) or after the fiscal year-end but prior to the date a prepayment pursuant to this Section 2.05(2)(a) is required to be made in respect of such fiscal year and in each case to the extent such prepayments are not funded with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities (including any Revolving Credit Facility (as defined in the First Lien Credit Agreement))); provided that (w) a prepayment of Loans pursuant to this 2.05(2)(a) in respect of any fiscal year shall only be required in the amount (if any) by which the ECF Payment Amount for such fiscal year exceeds $35.0 million, (x) the ECF Percentage shall be 25% if the Secured Net Leverage Ratio as of the end of the fiscal year covered by such financial statements was less than or equal to 4.25 to 1.00 and greater than 3.50 to 1.00 (calculated after giving effect to such prepayment at a rate of 50%) and (y) the ECF Percentage shall be 0% if the Secured Net Leverage Ratio as of the end of the fiscal year covered by such financial statements was less than or equal to 3.50 to 1.00 (calculated after giving effect to such prepayment at a rate of 25%); provided further that:
(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to Discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such portion of Excess Cash Flow otherwise required to repay the Loans pursuant to this Section 2.05(2)(a) on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Loans and Other Applicable Indebtedness requiring such Discharge at such time) to the prepayment of the Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Loans that would have otherwise been required pursuant to this Section 2.05(2)(a) shall be reduced accordingly (provided that the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Excess Cash Flow shall be allocated to the Loans to the extent required in accordance with the terms of this Section 2.05(2)(a)); and

(B) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Loans to the extent required in accordance with the terms of this Section 2.05(2)(a).

(b) Subject to the last paragraph of this Section 2.05(2), (i) if (x) the Borrower or any Restricted Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Proceeds, the Borrower shall prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (h) of this Section 2.05, an aggregate principal amount of Loans equal to 100% (such percentage as it may be reduced as described below, the “Net Proceeds Percentage”) of all Net Proceeds realized or received; provided that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment or a binding letter of intent to reinvest) in accordance with Section 2.05(2)(b)(ii); provided further that (x) the Net Proceeds Percentage shall be 50% if the Secured Net Leverage Ratio for the Test Period most recently ended prior to the date of such required prepayment is less than or equal to 4.25 to 1.00 and greater than 3.50 to 1.00 and (y) the Net Proceeds Percentage shall be 0% if the Secured Net Leverage Ratio for the Test Period most recently ended prior to the date of such required prepayment is less than or equal to 3.50 to 1.00; provided further that

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to Discharge any Other Applicable Indebtedness with Any Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such Net Proceeds otherwise required to repay the Loans pursuant to this Section 2.05(2)(b)(i) on a pro rata basis (determined on the basis of the aggregate

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outstanding principal amount of the Loans and Other Applicable Indebtedness requiring such Discharge at such time), to the prepayment of the Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Loans that would have otherwise been required pursuant to this Section 2.05(2)(b)(i) shall be reduced accordingly (provided that the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Net Proceeds shall be allocated to the Loans to the extent required in accordance with the terms of this Section 2.05(2)(b)(i));

(B) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Loans to the extent required in accordance with the terms of this Section 2.05(2)(b)(i).

(ii) With respect to any Net Proceeds realized or received with respect to any Asset Sale or any Casualty Event, the Borrower or any Restricted Subsidiary, at its option, may reinvest all or any portion of such Net Proceeds in assets useful for their business within (x) eighteen (18) months following receipt of such Net Proceeds or (y) if the Borrower or any Restricted Subsidiary enters into a legally binding commitment or a legally binding letter of intent to reinvest such Net Proceeds within eighteen (18) months following receipt thereof, within the later of (A) eighteen (18) months following receipt thereof and (B) one hundred eighty (180) days of the date of such legally binding commitment or legally binding letter of intent; provided that the Borrower may elect to deem expenditures that otherwise would be permissible reinvestments that occur prior to receipt of such Net Proceeds to have been reinvested in accordance with the provisions of this Section 2.05(2)(b)(ii) (it being understood that such deemed expenditures shall have been made no earlier than the earliest of notice to the Administrative Agent, execution of a definitive agreement for such Asset Sale and consummation of such Asset Sale or Casualty Event); provided further that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after such reinvestment election, and subject to clauses (g) and (h) of this Section 2.05(2), an amount equal to any such Net Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Loans as set forth in this Section 2.05.

(c) [Reserved].

(d) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness (i) not expressly permitted to be incurred or issued pursuant to Section 7.02 or (ii) that constitutes Other Loans or Credit Agreement Refinancing Indebtedness, in each case, incurred or issued to refinance any Class (or Classes) of Loans resulting in Net Proceeds (as opposed to such Credit Agreement Refinancing Indebtedness or Other Loans arising out of an exchange of existing Loans for such Credit Agreement Refinancing Indebtedness or Other Loans), the Borrower shall (in the case of the foregoing clause (d)(i), subject to the last paragraph of this Section 2.05(2)) prepay, or cause to be prepaid, an aggregate principal amount of Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(e) (i) Except as otherwise set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment, each prepayment of Loans required by Sections 2.05(2)(a), (b) and (d)(i) shall be allocated to any Class of Loans outstanding as directed by the Borrower, shall be applied pro rata to Lenders within such Class of Loans, based upon the outstanding principal amounts owing to each such Lender under such Class of Loans; provided that
(x) such prepayments may not be directed to a later maturing Class of Loans without at least a pro rata repayment of any earlier maturing Classes of Loans (except that any Class of Incremental Loans, Other Loans, Extended Loans or Replacement Loans may specify that one or more other Classes of later maturing Loans may be prepaid prior to such Class of earlier maturing Loans), and

(y) in the event that there are two or more outstanding Classes of Loans with the same Maturity Date, such prepayments may not be directed to any such Class of Loans without at least a pro rata repayment of any Classes of Loans maturing on the same date (except that any Class of Incremental Loans, Other Loans, Extended Loans or Replacement Loans may specify that one or more other Classes of Loans with the same Maturity Date may be prepaid prior to such Class of Loans maturing on the same date), and

(ii) each prepayment of Loans required by Section 2.05(2)(d)(ii) shall be allocated to any Class or Classes of Loans being refinanced as directed by the Borrower and shall be applied pro rata to Lenders within each such Class, based upon the outstanding principal amounts owing to each such Lender under each such Class of Loans.

(f) [Reserved].

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made pursuant to clauses (a) through (d) of this Section 2.05(2) at least three (3) Business Days prior to the date of such prepayment (provided that, in the case of clause (b) or (d) of this Section 2.05(2), the Borrower may rescind (or delay the date of prepayment identified in) such notice if such prepayment would have resulted from a refinancing of all or any portion of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower’s prepayment notice and of such Appropriate Lender’s Pro Rata Share of the prepayment. Each Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the “Declined Proceeds”) of Loans required to be made pursuant to clauses (a), (b) and (d)(i) of this Section 2.05(2) by providing written notice (each, a “Rejection Notice”) to the Administrative Agent and the Borrower no later than 5:00 p.m., New York time, one (1) Business Day after the date of such Lender’s receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Loans. Any Declined Proceeds remaining shall be retained by the Borrower (or the applicable Restricted Subsidiary) and may be applied by the Borrower or such Restricted Subsidiary in any manner not prohibited by this Agreement.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a “Foreign Asset Sale”), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a “Foreign Casualty Event”) or all or a portion of Excess Cash Flow are prohibited or delayed by applicable local law from being repatriated to the United States, an amount equal
to the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(2) so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, an amount equal to such Net Proceeds or Excess Cash Flow permitted to be repatriated will be promptly (and in any event not later than two (2) Business Days after any such repatriation) applied (net of additional taxes that are or would be payable or reserved against as a result thereof) to the repayment of the Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, an amount equal to the Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(2).

(i) All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurodollar Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurodollar Rate Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurodollar Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Notwithstanding anything to the contrary, no prepayment of Loans shall be required pursuant to this Section 2.05(2) (other than pursuant to Section 2.05(2)(d)(ii)), (x) if such prepayment is prohibited by the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement or (y) prior to the Discharge of Senior Obligations, except to the extent of, and not to exceed, the amount of Net Proceeds or Excess Cash Flow, as the case may be, consisting of amounts declined by (A) the First Lien Term Lenders pursuant to Section 2.05(2)(g) of the First Lien Credit Agreement, (B) the holders of any “Credit Agreement Refinancing Indebtedness” (as defined in the First Lien Credit Agreement) or “Permitted Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement) or other Indebtedness secured on a basis senior to the Liens securing the Second Lien Obligations and (C) the holders of any Refinancing Indebtedness incurred, issued or otherwise obtained to Refinance (in whole or in part) such Indebtedness (and any Refinancing Indebtedness in respect thereof) described under clause (x)(A) or (x)(B) of this paragraph, in each case constituting Senior Obligations (as defined in the First Lien/Second Lien Intercreditor Agreement) pursuant to the equivalent provisions of the credit documentation governing such Refinancing Indebtedness, which shall in each case be required to be applied as a mandatory prepayment hereunder (to the extent otherwise required herein) in an amount equal to the amounts so declined.
SECTION 2.06 Termination or Reduction of Commitments. The Closing Date Commitment of each Lender on the Closing Date shall be automatically and permanently reduced to $0 upon the making of such Lender’s Initial Loans to the Borrower pursuant to Section 2.01(1).

SECTION 2.07 Repayment of Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the Initial Loans, the aggregate principal amount of all Initial Loans outstanding on such date.

SECTION 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period, plus the Applicable Rate and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, plus the Applicable Rate.

(2) During the continuance of a Default under Section 8.01(1), the Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

SECTION 2.09 Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

SECTION 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.11 Evidence of Indebtedness.

(1) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Loans made by the Lenders to the 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 the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, 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, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) [Reserved.]

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(1), and by each Lender in its account or accounts pursuant to Section 2.11(1), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

SECTION 2.12 Payments Generally.

(1) All payments to be made by the Borrower hereunder shall be made in Dollars without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent’s Office for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate 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 Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) Except as otherwise expressly provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

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(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender’s Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the borrowing of the Initial Loans set forth in Section 4.01 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

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

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). 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 all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.
SECTION 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein, if any Lender of any Class shall obtain payment in respect of any principal of or interest on account of the Loans of such Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class 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 (a) the amount of such paying Lender’s required repayment to (b) 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. For the avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.13 may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of clause (3) of the definition of Excluded Taxes, any participation acquired by a Lender pursuant to this Section 2.13 shall be treated as having been acquired on the earlier date(s) on which the applicable interest(s) in the Commitment(s) or Loan(s) to which such participation relates were acquired by such Lender.

SECTION 2.14 Incremental Facilities.

(1) Incremental Loan Request. The Borrower may at any time and from time to time after the Closing Date, by notice to the Administrative Agent (an “Incremental Loan Request”), request one or more new commitments which may be of the same Class as any outstanding Loans (a “Loan Increase”) or a new Class of term loans (collectively with any Loan Increase, the “Incremental Commitments”), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders. Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Commitments.
(2) Incremental Loans. Any Incremental Loans or Incremental Commitments effected through the establishment of one or more new term loans made on an Incremental Facility Closing Date (other than a Loan Increase) shall be designated a separate Class of Incremental Loans for all purposes of this Agreement. On any Incremental Facility Closing Date on which any Incremental Commitments of any Class are effected (including through any Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Lender of such Class shall make a Loan to the Borrower (an "Incremental Loan") in an amount equal to its Incremental Commitment of such Class and (ii) each Incremental Lender of such Class shall become a Lender hereunder with respect to the Incremental Commitment of such Class and the Incremental Loans of such Class made pursuant thereto.

(3) Incremental Lenders. Incremental Loans may be made by any existing Lender as approved by the Borrower (but no existing Lender will have an obligation to make any Incremental Commitment (or Incremental Loan), nor will the Borrower have any obligation to approach any existing Lenders to provide any Incremental Commitment (or Incremental Loan)) or by any Additional Lender (each such existing Lender or Additional Lender providing such Loan or Commitment, an "Incremental Lender" and, collectively, the "Incremental Lenders"); provided that (i) the Administrative Agent shall have consented (in each case, not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Loans to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans to such Additional Lender and (ii) with respect to Incremental Commitments, any Affiliated Lender providing an Incremental Commitment shall be subject to the same restrictions set forth in Section 10.07(b) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Loans.

(4) Effectiveness of Incremental Amendment. The effectiveness of any Incremental Amendment and the availability of any initial credit extensions thereunder shall be subject to the satisfaction on the date thereof (the "Incremental Facility Closing Date") of each of the following conditions (subject to Section 1.07(10)):

(a) (x) no Event of Default shall exist after giving effect to such Incremental Commitments; provided that, with respect to any Incremental Amendment the primary purpose of which is to finance an acquisition or other Investment permitted by this Agreement, the requirement pursuant to this clause (4)(a)(x) shall be that no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) shall exist after giving effect to such Incremental Commitments, and (y) the representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Incremental Amendment (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); provided that, in connection with an acquisition or other Investment permitted hereunder, the conditions in clause (x) and in clause (y) shall only be required to the extent that the Persons providing more than 50% of the applicable Incremental Loans and Incremental Commitments (provided, further, that, in the case of an acquisition or other Investment with a purchase price in excess of $100.0 million, the conditions contained in the proviso to clause (x) with respect to no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) and in clause (y) with respect to Specified Representations, in each case, shall be required whether or not requested by such Persons, unless waived in accordance with Section 10.01);
(b) each Incremental Commitment shall be in an aggregate principal amount that is not less than $5.0 million (provided that such amount may be less than $5.0 million if such amount represents all remaining availability under the limit set forth in clause (c) of this Section 2.14(4));

(c) the aggregate principal amount of Incremental Loans and Incremental Commitments shall not, together with the aggregate principal amount of Permitted Incremental Equivalent Debt, exceed the sum of:

(A) (1) $500.0 million plus any General Debt Basket Reallocated Amount less the First Lien Incremental Usage Amount plus (2) the aggregate amount of (w) voluntary prepayments, redemptions or repurchases of Incremental Loans and Permitted Incremental Equivalent Debt (other than any Permitted Incremental Equivalent Debt that is a revolving credit facility) (including purchases of Incremental Loans or Permitted Incremental Equivalent Debt by Holdings, the Borrower or any of its Subsidiaries at or below par, in which case the amount of voluntary prepayments of such Incremental Loans or Permitted Incremental Equivalent Debt shall be deemed not to exceed the actual purchase price of such Loans or Permitted Incremental Equivalent Debt below par), in each case, only to the extent such Incremental Loans or Permitted Incremental Equivalent Debt was incurred in reliance on clause (A)(1) above, (x) voluntary permanent commitment reductions in respect of Incremental Revolving Commitments (as defined in the First Lien Credit Agreement) or Permitted Incremental Equivalent Debt (as defined in the First Lien Credit Agreement) consisting of revolving credit commitments, in each case, to the extent such Incremental Revolving Commitments or Permitted Incremental Equivalent Debt was incurred in reliance on Section 2.14(4)(c)(A)(1) of the First Lien Credit Agreement, (y) voluntary prepayments, redemption or repurchase of First Lien Incremental Usage Amount Debt (including purchases of First Lien Incremental Usage Amount Debt by Holdings, the Borrower or any of its Subsidiaries) and (z) voluntary prepayments, redemptions or repurchases of any Credit Agreement Refinancing Indebtedness, Other Loans, Refinancing Indebtedness or other Indebtedness, in each case, previously applied to the prepayment, redemption or repurchase of any Incremental Loans and Permitted Incremental Equivalent Debt incurred in reliance on clause (A)(1) above or any First Lien Incremental Usage Amount Debt, in the case of this clause (2), so long as such prepayment, redemption or repurchase was not previously included in clause (w) or clause (y) above; other than, in each case under clauses (w), (y) and (z), from proceeds of long-term Indebtedness (other than revolving credit facilities), plus

(B) (x) in the case of any Incremental Loans that effectively extend the Maturity Date of, or refinance, any Facility, an amount equal to the portion of the Facility to be replaced with (or refinanced by) such Incremental Loans and (y) in the case of any Incremental Loans that effectively replace any Loan that is terminated or cancelled in accordance with Section 3.07, an amount equal to the portion of the relevant terminated or cancelled Loan, plus

(C) solely to the extent not in duplication of prepayments, redemptions, repurchases or permanent commitment reductions described in Section 2.14(4)(c)(A)(2), the aggregate amount of (x) voluntary prepayments, redemptions or repurchases of Loans and Permitted Incremental Equivalent Debt (other than any Permitted Incremental Equivalent Debt that is a revolving credit facility) (including purchases of Loans or Permitted Incremental Equivalent Debt by Holdings, the Borrower or any of its Subsidiaries, (y) voluntary permanent commitment reductions in respect of Revolving Commitments (as defined in the First Lien Credit Agreement) or Permitted Incremental Equivalent Debt (as defined in the First Lien Credit Agreement) consisting of revolving
(D) an unlimited amount, so long as in the case of this clause (D) only,

(x) in the case of Incremental Loans secured by Liens on all or a portion of the Collateral, either (I) the Secured Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed 5.25 to 1.00 (including in connection with an acquisition or other similar Investment permitted under this Agreement) or (II) to the extent such Incremental Loans are incurred in connection with an acquisition or other similar Investment permitted under this Agreement, the Secured Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence is no greater than the Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans and

(y) in the case of Incremental Loans that are unsecured, (i) the Total Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed 5.50 to 1.00 (including in connection with an acquisition or other similar Investment permitted under this Agreement) or (ii) to the extent such Incremental Loans are incurred in connection with an acquisition or other Investment permitted under this Agreement, the Total Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence is no greater than the Total Net Leverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans;

(5) Required Terms. The terms, provisions and documentation of the Incremental Loans of any Class and any Loan Increase shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to the Initial Loans existing on the Incremental Facility Closing Date, shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith), (B) be not
materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of the Initial Loans, except with respect to covenants and other terms applicable to any period after the Latest Maturity Date in effect immediately prior to the incurrence of the Incremental Loans or (C) if neither clause (A) or (B) are satisfied, such terms, provisions and documentation shall be reasonably satisfactory to the Administrative Agent (it being understood that, at Borrower’s election, to the extent any term or provision is added for the benefit of the Lenders of Incremental Loans, no consent shall be required from the Administrative Agent to the extent that such term or provision is also added (or the features of such term are provided) for the benefit of the Lenders of the Initial Loans); provided, further, that in the case of a Loan Increase, the terms, provisions and documentation of such Loan Increase shall be identical (other than with respect to upfront fees, OID or similar fees, it being understood that, if required to consummate such Loan Increase transaction, the interest rate margins and rate floors may be increased, any call protection provision may be made more favorable to the applicable existing Lenders and additional upfront or similar fees may be payable to the lenders providing the Loan Increase) to the applicable Loans being increased, in each case, as existing on the Incremental Facility Closing Date (provided that if such Incremental Loans are to be “fungible” with the Initial Loans, notwithstanding any other conditions specified in this Section 2.14(5), the amortization schedule for such “fungible” Incremental Loan may provide for amortization in such other percentage(s) to be agreed by Borrower and the Administrative Agent to ensure that the Incremental Loans will be “fungible” with the Initial Loans). In any event:

(a) the Incremental Loans:

   (i) (x) shall rank equal in priority in right of payment with the Second Lien Obligations under this Agreement and (y) shall either (1) rank equal (but without regard to the control of remedies) or junior in priority of right of security with the Second Lien Obligations under this Agreement (subject to the applicable Intercreditor Agreement) or (2) be unsecured, in each case as applicable pursuant to clause (4)(c) above,

   (ii) shall not mature earlier than the Original Maturity Date,

   (iii) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Initial Loans on the date of incurrence of such Incremental Loans,

   (iv) subject to clause (5)(a)(iii) above and clause (5)(b) below, respectively, shall have amortization and an Applicable Rate determined by the Borrower and the applicable Incremental Lenders,

   (v) may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Loans hereunder (except that, unless otherwise permitted under this Agreement, such Incremental Loans may not participate on a greater than a pro rata basis as compared to any earlier maturing Class of Loans constituting Second Lien Obligations in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), as specified in the applicable Incremental Amendment,

   (vi) shall be denominated in Dollars or, subject to the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned), another currency as determined by the Borrower and the applicable Incremental Lenders,

   (vii) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

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(b) the amortization schedule applicable to any Incremental Loans and the All-In Yield applicable to the Incremental Loans of each Class shall be determined by the Borrower and the applicable Incremental Lenders and shall be set forth in each applicable Incremental Amendment; provided, however, that with respect to any syndicated Dollar-denominated Class of Incremental Loans that rank equal in priority of right of security with the Second Lien Obligations under this Agreement (but without regard to the control of remedies), the All-In Yield applicable to such Incremental Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Initial Loans, plus 50 basis points per annum unless the Applicable Rate (together with, as provided in the proviso below, the Eurodollar Rate or Base Rate floor) with respect to the Initial Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the Initial Loans to equal the All-In Yield then applicable to the Incremental Loans, minus 50 basis points per annum; provided that any increase in All-In Yield on the Initial Loans due to the application of a Eurodollar Rate or Base Rate floor on any Incremental Loan shall be effected solely through an increase in (or implementation of, as applicable) the Eurodollar Rate or Base Rate floor applicable to such Initial Loans.

(6) Incremental Amendment. Commitments in respect of Incremental Loans shall become Commitments under this Agreement pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Incremental Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. In connection with any Incremental Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Loans are provided with the benefit of the applicable Loan Documents. The Borrower will use the proceeds (if any) of the Incremental Loans for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Commitments or Incremental Loans unless it so agrees.

Notwithstanding anything to the contrary in Section 10.01, the Administrative Agent is expressly permitted, without the consent of any Lenders, to amend the Loan Documents (including Section 2.07) to the extent necessary or appropriate in the reasonable discretion of the Administrative Agent to give effect to any Incremental Commitment pursuant to this Section 2.14 (which may be in the form of an amendment and restatement), including to provide to the Lenders of any Class of Loans or Commitments hereunder the benefit of any term or provision that is added under any Incremental Amendment for the benefit of the Lenders of a Class of Incremental Commitments (including to the extent necessary or advisable to allow any Class of Incremental Commitments to be an Incremental Increase).

(7) [Reserved.]

(8) This Section 2.14 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.14 may be amended with the consent of the Required Lenders (or the applicable Required Facility Lenders, if applicable).
SECTION 2.15 Refinancing Amendments.

(1) At any time after the Closing Date, the Borrower may obtain, from any Lender or any Additional Lender (it being understood that (i) no Lender shall be required to provide any Other Loan without its consent and (ii) Other Loans provided by Affiliated Lenders shall be subject to the limitations set forth in Section 10.07(h)), Other Loans to refinance all or any portion of the applicable Class or Classes of Loans then outstanding under this Agreement which will be made pursuant to Other Commitments, pursuant to a Refinancing Amendment; provided that such Other Loans (i) shall rank equal in priority in right of payment with the other Loans and Commitments hereunder, (ii) shall be unsecured or rank pari passu (without regard to the control of remedies) or junior in right of security with any Second Lien Obligations under this Agreement and, if secured on a junior basis, shall be subject to an applicable Intercreditor Agreement(s), (iii) if secured, shall not be secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (iv) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors, (v) shall have interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and prepayment terms and premiums as may be agreed by the Borrower and the Lenders thereof and/or (B) may provide for additional fees and/or premiums payable to the Lenders providing such Other Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Refinancing Amendment, (vi) may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (vii) will have a final maturity date no earlier than, and will have a Weighted Average Life to Maturity equal to or greater than, the Loans being refinanced and (viii) will have such other terms and conditions (other than as provided in foregoing clauses (ii) through (vii)) that either, at the option of the Borrower, (1) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Other Loans (as determined by the Borrower in good faith) or (2) if otherwise not consistent with the terms of such Class of Loans or Commitments being refinanced, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Class of Loans being refinanced, except with respect to covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing. Any Other Loans may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Loans hereunder (except that, unless otherwise permitted under this Agreement or unless the Class of Loans being refinanced was so entitled to participate on a greater than a pro rata basis in such mandatory prepayments, such Other Loans may not participate on a greater than a pro rata basis as compared to any earlier maturing Class of Loans constituting Second Lien Obligations in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), as specified in the applicable Refinancing Amendment. In connection with any Refinancing Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Other Loans are provided with the benefit of the applicable Loan Documents.

(2) Each Class of Other Commitments and Other Loans incurred under this Section 2.15 shall be in an aggregate principal amount that is not less than $5.0 million. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Commitments and Other Loans incurred pursuant thereto (including any amendments necessary to treat the Other Loans and/or Other Commitments as Loans and Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15.
This Section 2.15 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.15 may be amended with the consent of the Required Lenders (or the applicable Required Facility Lenders, if applicable).

SECTION 2.16 Extensions of Loans.

(1) Extension of Loans. The Borrower may at any time and from time to time request that all or a portion of the Loans of any Class (each, an "Existing Loan Class") be converted or exchanged to extend the scheduled Maturity Date(s) of any payment of principal with respect to all or a portion of any principal amount of such Loans (any such Loans which have been so extended, "Extended Loans") and to provide for other terms consistent with this Section 2.16. Prior to entering into any Extension Amendment with respect to any Extended Loans, the Borrower shall provide written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Loan Class, with such request offered equally to all such Lenders of such Existing Loan Class) (each, an "Extension Request") setting forth the proposed terms of the Extended Loans to be established, which terms shall be identical in all material respects to the Loans of the Existing Loan Class from which they are to be extended except that (i) the scheduled final maturity date shall be extended and all or any of the scheduled amortization payments, if any, of all or a portion of any principal amount of such Extended Loans may be delayed to later dates than the scheduled amortization, if any, of principal of the Loans of such Existing Loan Class (with any such delay resulting in a corresponding adjustment to the scheduled amortization payments reflected in the Extension Amendment, the Incremental Amendment, the Refinancing Amendment or any other amendment, as the case may be, with respect to the Existing Loan Class from which such Extended Loans were extended), (ii)(A) the interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and voluntary prepayment terms and premiums with respect to the Extended Loans may be different than those for the Loans of such Existing Loan Class and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) the Extended Loans may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (iv) any Extended Loans may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Loans hereunder (except that, unless otherwise permitted under this Agreement, such Extended Loans may not participate on a greater than pro rata basis as compared to any earlier maturing Class of Loans in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), in each case as specified in the respective Extension Request and (v) the Extension Amendment may provide for other covenants and terms that apply to any period after the Latest Maturity Date in respect of Loans that is in effect immediately prior to the establishment of such Extended Loans. No Lender shall have any obligation to agree to have any of its Loans of any Existing Loan Class converted into Extended Loans pursuant to any Extension Request. Any Extended Loans extended pursuant to any Extension Request shall be designated a series (each, an "Extension Series") of Extended Loans for all purposes of this Agreement and shall constitute a separate Class of Loans from the Existing Loan Class from which they were extended; provided that any Extended Loans amended from an Existing Loan Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Loan Class.

(2) [Reserved.]

(3) Extension Request. The Borrower shall provide the applicable Extension Request to the Administrative Agent at least five (5) Business Days (or such shorter period as the Administrative Agent may determine in its sole discretion) prior to the date on which Lenders under the applicable Existing Loan Class are requested to respond. Any Lender holding a Loan under an Existing Loan Class shall notify the Administrative Agent whether the Lender desires to have its Loans included in any such Extension Series provided for in such Extension Request. If the Borrower shall have received the requisite consent to the Establishment of any such Extension Series, the Administrative Agent shall provide written notice of any such Establishment to the applicable Lenders in the Extension Request. A Lender's consent to the Establishment of any such Extension Series shall not be unreasonably withheld or delayed, provided that a Lender may object to the Establishment of any such Extension Series if it does not desire to have any of its Loans included in such Extension Series.
Loan Class (each, an “Extending Lender”) wishing to have all or a portion of its Loans of an Existing Loan Class or Existing Loan Classes, as applicable, subject to such Extension Request converted or exchanged into Extended Loans shall notify the Administrative Agent (each, an “Extension Election”) on or prior to the date specified in such Extension Request of the amount of its Loans which it has elected to convert or exchange into Extended Loans. In the event that the aggregate principal amount of Loans subject to Extension Elections exceeds the amount of Extended Loans requested pursuant to the Extension Request, Loans subject to Extension Elections shall be converted or exchanged into Extended Loans on a pro rata basis (subject to such rounding requirements as may be established by the Administrative Agent) based on the aggregate principal amount of Loans included in each such Extension Election or as may be otherwise agreed to in the applicable Extension Amendment.

(4) Extension Amendment. Extended Loans shall be established pursuant to an amendment (each, an “Extension Amendment”) to this Agreement (which, notwithstanding anything to the contrary set forth in Section 10.01, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Loans established thereby) executed by the Borrower, the Administrative Agent and the Extending Lenders, it being understood that such Extension Amendment shall not require the consent of any Lender other than the Extending Lenders. Each request for an Extension Series of Extended Loans proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than $5.0 million (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount), and the Borrower may condition the effectiveness of any Extension Amendment on an Extension Minimum Condition, which may be waived by the Borrower in its sole discretion. In addition to any terms and changes required or permitted by Section 2.16(1), each of the parties hereto agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent necessary to (i) in respect of each Extension Amendment in respect of Extended Loans, amend the scheduled amortization payments pursuant to Section 2.07 or the applicable Incremental Amendment, Extension Amendment, Refinancing Amendment or other amendment, as the case may be, with respect to the Existing Loan Class from which the Extended Loans were exchanged to reduce each scheduled repayment amount for the Existing Loan Class in the same proportion as the amount of Loans of the Existing Loan Class is to be reduced pursuant to such Extension Amendment (it being understood that the amount of any repayment amount payable with respect to any individual Loan of such Existing Loan Class that is not an Extended Loan shall not be reduced as a result thereof); (ii) reflect the existence and terms of the Extended Loans incurred pursuant thereto; (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Loans and the application of prepayments with respect thereto; and (iv) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment. In connection with any Extension Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Extended Loans are provided with the benefit of the applicable Loan Documents.

(5) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Loan Class is converted or exchanged to extend the related scheduled maturity date(s) in accordance with paragraph (1) of this Section 2.16, in the case of the existing Loans of each Extending Lender, the aggregate principal amount of such existing Loans shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Loans so converted or exchanged by such Lender on such date, and the Extended Loans shall be established as a separate Class of Loans, except as otherwise provided under Section 2.16(1).
In the event that the Administrative Agent determines in its sole discretion that the allocation of Extended Loans of a given Extension Series to a given Lender was incorrectly determined as a result of manifest administrative error in the receipt and processing of an Extension Election timely submitted by such Lender in accordance with the procedures set forth in the applicable Extension Amendment, then the Administrative Agent, the Borrower and such affected Lender may (and hereby are authorized to), in their sole discretion and without the consent of any other Lender, enter into an amendment to this Agreement and the other Loan Documents (each, a “Corrective Extension Amendment”) within 15 days following the effective date of such Extension Amendment, as the case may be, which Corrective Extension Amendment shall (i) provide for the conversion or exchange and extension of Loans under the Existing Loan Class in such amount as is required to cause such Lender to hold Extended Loans of the applicable Extension Series into which such other Loans were initially converted or exchanged, as the case may be, in the amount such Lender would have held had such administrative error not occurred and had such Lender received the minimum allocation of the applicable Loans to which it was entitled under the terms of such Extension Amendment, in the absence of such error, (ii) be subject to the satisfaction of such conditions as the Administrative Agent, the Borrower and such Extending Lender may agree, and (iii) effect such other amendments of the type (with appropriate reference and nomenclature changes) described in the penultimate sentence of Section 2.16(4).

No conversion or exchange of Loans or Commitments pursuant to any Extension Amendment in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

This Section 2.16 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.16 may be amended with the consent of the Required Lenders (or the applicable Required Facility Lenders, if applicable).

SECTION 2.17 [Reserved].

SECTION 2.18 Prepayment Premium. Each prepayment of the Initial Loans pursuant to Section 2.05(1) or Section 2.05(2)(d) shall be accompanied by a premium equal to (a) if such prepayment is made prior to the first anniversary of the Closing Date, 2.00% of the principal amount of the Initial Loans so prepaid, (b) if such prepayment is made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, 1.00% of the principal amount of the Initial Loans so prepaid and (c) if such prepayment is made on or after the second anniversary of the Closing Date, 0% of the principal amount of the Initial Loans so prepaid.

Article III

Taxes, Increased Costs Protection and Illegality

SECTION 3.01 Taxes.

(1) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent is required by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:
(a) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party’s account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(b) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(c) within thirty days after paying any sum from which it is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (a) above to pay (or, in each case, as soon as reasonably practicable thereafter), the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its legal ineligibility to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

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(i) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of IRS Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H (any such certificate, a “United States Tax Compliance Certificate”) and (B) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), IRS Form W-8IMY (or any successor forms) of such Foreign Lender, accompanied by an IRS Form W-8ECI, Form W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (provided that, if a Lender is a partnership (and not a participating Lender) and if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner(s)), or

(v) two properly completed and duly signed copies of any other documentation prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this paragraph (c), the term “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender’s owner and, as applicable, such Lender.
Notwithstanding any other provision of this Section 3.01(3), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver. Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(3).

(4) Without duplication of other amounts payable by the Borrower pursuant to Section 3.01(2), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or the Administrative Agent (each a “Tax Indemnitee”), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) (other than any interest, penalties and other costs determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Tax Indemnitee), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority; provided that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Tax Indemnitee will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 3.01(6)) so long as such efforts would not, in the sole determination of such Tax Indemnitee (exercised in good faith), result in any additional out-of-pocket costs or expenses not reimbursed by such Loan Party or be otherwise materially disadvantageous to such Tax Indemnitee. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund (whether received in cash or applied as a credit against any other cash Taxes payable) of any Non-Excluded Taxes or Other Taxes in respect of which it has received indemnification payments or additional amounts under this Section 3.01, then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to pay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(6), in no event will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this Section 3.01(6) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax Indemnitee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower whichever of the following is applicable: (i) if the Administrative Agent is a “United States person” within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Administrative Agent is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (ii) with
respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is a U.S. branch and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. Notwithstanding anything to the contrary in this Section 3.01(7), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(8) The agreements in this Section 3.01 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

SECTION 3.02 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 3.03 Inability to Determine Rates. If the Administrative Agent (in the case of clause (1) or (2) below) or the Required Lenders (in the case of clause (3) below) reasonably determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that

(1) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan,
(2) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or

(3) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

SECTION 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Rate Loans

(1) Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender that is not otherwise accounted for in the definition of “Eurodollar Rate” or this clause (1);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) 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), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; provided that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

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(2) **Capital Requirements.** If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender’s holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it to a level below that which such Lender or such Lender’s holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy), 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), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered; provided that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

**SECTION 3.05 Funding Losses.** Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

1. any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
2. any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower; or
3. any assignment of a Eurodollar Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Eurodollar Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the “floor” specified in the proviso to the definition of “Eurodollar Rate.”

**SECTION 3.06 Matters Applicable to All Requests for Compensation.**

1. **Designation of a Different Lending Office.** If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.
Section 3.01. Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurodollar Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurodollar Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

Section 3.02. Conversion of Eurodollar Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender’s Eurodollar Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate Loans made by other Lenders, as applicable, are outstanding, such Lender’s Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Eurodollar Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

Section 3.03. Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender’s right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender’s intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.07 Replacement of Lenders under Certain Circumstances. If (1) any Lender requests compensation under Section 3.04 or ceases to make Eurodollar Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (3) any Lender is a Non-Consenting Lender or (4) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);
such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender’s Commitment and outstanding Loans and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); provided that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

such assignment does not conflict with applicable Laws; and

the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “Non-Consenting Lender.”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 3.08 Survival. All of the Borrower’s obligations under this Article III shall survive termination of the Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.
SECTION 4.01 Conditions to the Initial Loans on Closing Date. The obligation of each Lender to make an Initial Loan hereunder on the Closing Date is subject to satisfaction (or waiver) of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(1) The Administrative Agent’s receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (other than in the case clause (1)(e) below):

(a) a Committed Loan Notice;

(b) executed counterparts of this Agreement and the Guaranty;

(c) each Collateral Document set forth on Schedule 4.01(1)(c) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with (subject to Section 6.13(2)):

(i) certificates, if any, representing the Pledged Collateral that is certificated equity of the Borrower and the Loan Parties’ Material Domestic Subsidiaries accompanied by undated stock powers executed in blank, which delivery requirement may be satisfied by delivery to the Collateral Agent or its agent, designee or bailee in accordance with the terms of the First Lien/Second Lien Intercreditor Agreement; and

(ii) evidence that all UCC-1 financing statements in the appropriate jurisdiction or jurisdictions for each Loan Party that the Administrative Agent and the Collateral Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;

(d) certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such jurisdiction), customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party certifying true and complete copies of the Organizational Documents attached thereto and 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;

(e) a customary legal opinion from Ropes & Gray LLP, counsel to the Loan Parties;

(f) a certificate of a Responsible Officer certifying that the conditions set forth in Section 4.01(4) and (5) has been satisfied; and
(g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I;

(2) The First Lien/Second Lien Intercreditor Agreement shall have been duly executed and delivered by the Loan Parties thereto and the Second Lien Administrative Agent.

(3) The Arrangers shall have received (i) the Annual Financial Statements and (ii) the Quarterly Financial Statements. The Arrangers shall have received the Pro Forma Financial Statements.

(4) The representations and warranties of the Borrower 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.

(5) No Default shall exist, or would result from such proposed Initial Loans on the Closing Date or from the application of the proceeds therefrom.

(6) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(7) The Administrative Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information in respect of the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested in writing by it at least ten (10) Business Days prior to the Closing Date.

(8) All fees and expenses (in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower)) required to be paid hereunder on the Closing Date shall have been paid, or shall be paid substantially concurrently with the initial Borrowing on the Closing Date.

(9) Substantially concurrently with the initial Borrowing(s) on the Closing Date, the Transactions shall have been consummated from the proceeds of the Facilities.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.
Article V

Representations and Warranties

The Borrower and, in respect of Sections 5.01, 5.02, 5.04, 5.06, 5.13 and 5.17 only, Holdings, represent and warrant to the Administrative Agent and the Lenders, after giving effect to the Transactions, at the time of each Borrowing (solely to the extent required to be true and correct for such Borrowing pursuant to Section 2.14):

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries that is a Material Subsidiary:

(1) is a Person duly organized or formed, 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),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) 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 as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws, orders, writs, injunctions and orders (including the United States Foreign Corrupt Practices Act of 1977 (the “FCPA”)); and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person’s Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
SECTION 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

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

SECTION 5.05 Financial Statements; No Material Adverse Effect.

(1) (a) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of (x) in the case of the Annual Financial Statements, the McAfee Business and (y) in the case of the Quarterly Financial Statements, the Borrower and its Subsidiaries, in each case, as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (i) except as otherwise expressly noted therein and (ii) subject, in the case of the Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) The unaudited pro forma consolidated statement of operations of the Borrower for the 12-month period ending on July 1, 2017 (which may be prepared on a combined or other pro forma basis in the good faith judgment of the Borrower with respect to predecessor and successor periods relative to the Original Transactions), prepared after giving effect to the Transactions as if the Transactions had occurred at the beginning of such period (collectively, the “Pro Forma Financial Statements”), copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith, based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a pro forma basis the estimated results of operations of the Borrower and its Subsidiaries for the period covered thereby.

(2) Since the Closing Date, 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.
(3) The forecasts of consolidated statements of operations of the Borrower and its Subsidiaries for each fiscal year ending after the Closing Date until the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that:

(a) no forecasts are to be viewed as facts,
(b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or the Investors,
(c) no assurance can be given that any particular forecasts will be realized and
(d) actual results may differ and such differences may be material.

SECTION 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

SECTION 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Restricted Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for 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, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility except for such actions that were in compliance with Environmental Law; and (e) to the knowledge of any Loan Party or any Restricted Subsidiary, there are no occurrences, facts, circumstances or conditions which could reasonably be expected to give rise to an Environmental Claim.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), except those which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP.
There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (a) No ERISA Event has occurred or is reasonably expected to occur; and

(b) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Laws, and (b) none of Holdings, the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

SECTION 5.12 Subsidiaries.

(1) As of the Closing Date, after giving effect to the Transactions, all of the outstanding Equity Interests in the Borrower and its Restricted Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests that constitute Collateral owned by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens except (a) those Liens created under the Collateral Documents or the First Lien Credit Documents and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of organization of each Subsidiary, and

(b) the ownership interests of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership.
SECTION 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, pro forma financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

SECTION 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, “IP Rights”) that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and the Subsidiaries, on a consolidated basis, are Solvent.

SECTION 5.17 USA PATRIOT Act; Anti-Terrorism Laws. To the extent applicable, each of the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, and (ii) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other applicable enabling legislation or executive order relating thereto. Neither Holdings, the Borrower nor any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer or employee of Holdings, the Borrower or any of the Restricted Subsidiaries, is currently the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”) (“Sanctions”). No proceeds of the Loans will be used by Holdings, the Borrower or any Restricted Subsidiary directly or, to the knowledge of the Borrower, indirectly, for the purpose of financing activities of or with any Person, or in any country, that, at the time of such financing, is the subject of any Sanctions administered by OFAC, except to the extent licensed or otherwise approved by OFAC.
SECTION 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereunder or by the applicable Collateral Documents (including the delivery to Collateral Agent of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable second priority Lien (subject to Liens permitted by Section 7.01 and to any applicable Intercreditor Agreement) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement, (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01 or (D) any Excluded Assets.

Article VI

Affirmative Covenants

So long as the Termination Conditions have not been satisfied, the Borrower shall (and, with respect to Sections 6.05(1) and 6.11 only, Holdings shall), and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

SECTION 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) each of the following:

(1) within ninety (90) days after the end of each fiscal year of the Borrower (or, solely for the fiscal year ending on or about December 30, 2017, one hundred and fifty (150) days and solely for the year ending on or about December 29, 2018, one hundred and twenty (120) days) commencing with the fiscal year ending on or about December 30, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations and cash flows for such fiscal year (in the case of such financial statements for the fiscal year ending on or about December 30, 2017, for the period from April 3, 2017 to the last day of such fiscal year), together with related notes thereto, setting forth in each case (commencing with the fiscal year ending on or about December 29, 2018) in comparative form the figures for the previous fiscal year (provided that financial statements or financial data for the fiscal year ending on or about December 30, 2017, for comparative purposes relative to the fiscal year ending on or about December 30, 2017, for comparative purposes relative to the fiscal year ending on or about December 29, 2018, may be presented on a combined or other pro forma basis prepared in good faith by the Borrower), in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a "going concern")
explanatory paragraph or like qualification that is due to (i) the impending maturity of any Indebtedness, (ii) any anticipated inability to satisfy the Financial Covenant (as defined in the First Lien Credit Agreement) or any other financial covenant or (iii) an actual Default of the Financial Covenant (as defined in the First Lien Credit Agreement) or any default with respect to any other financial covenant;

(2) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (or, solely for the fiscal quarter ending on or about September 30, 2017, seventy-five (75) days after the end of such fiscal quarter and solely for the fiscal quarters ending on or about March 31, 2018 and June 30, 2018, sixty (60) days after the end of such fiscal quarter) commencing with the fiscal quarter ended on or about September 30, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) consolidated statement of operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth commencing with the fiscal quarter ending on or about September 29, 2018, (x) in the case of the preceding clause (a), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year and (y) in the case of the preceding clause (b), in comparative form the figures for the corresponding portion of the previous fiscal year (provided that for any fiscal quarter ending in fiscal year 2018, comparative figures of prior fiscal periods shall be limited to the corresponding fiscal quarter of fiscal year 2017 (and not for the portion of the fiscal year then ended)), accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with related notes thereto;

(3) within ninety (90) days after the end of each fiscal year of the Borrower (or, solely for the fiscal year ending on or about December 30, 2017, one hundred and fifty (150) days and solely for the year ending on or about December 29, 2018, one hundred and twenty (120) days) commencing with the fiscal year ending on or about December 30, 2017, a consolidated budget for the following fiscal year in form customarily prepared with regard to the Borrower and its Restricted Subsidiaries, which budget shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such budget (it being understood that any projections contained therein are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material); provided that the requirements of this Section 6.01(3) shall not apply at any time following the consummation of the first public offering of the Borrower’s common equity or the common equity of any Parent Company after the Closing Date;

(4) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(1) and 6.01(2), the related unaudited (it being understood that such information may be audited at the option of the Borrower) consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; and

(5) at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to Sections 6.01(1) and 6.01(2) above, to participate in one conference call for Lenders (if requested by the Administrative Agent) to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the
most recently ended period for which financial statements have been delivered, which conference call will only pertain to matters available or distributed to “public side” Lenders; provided that if the Borrower holds a conference call open to the public or holders of any public securities to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently ended measurement period for which financial statements have been delivered pursuant to Sections 6.01(1) or 6.01(2) above, such conference call will be deemed to satisfy the requirements of this Section 6.01(5).

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower’s or such Parent Company’s Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); provided that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a “going concern” explanatory paragraph or like qualification that is due to (i) the impending maturity of any Indebtedness, (ii) any anticipated inability to satisfy the Financial Covenant (as defined in the First Lien Credit Agreement) or any other financial covenant or (iii) an actual Default of the Financial Covenant (as defined in the First Lien Credit Agreement) or any default with respect to any other financial covenant).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to the Transactions or any other transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements.

SECTION 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02):

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for [the fiscal year ended on or about December 30, 2017]), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(2) promptly after the same are publicly available, copies of all special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

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(3) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the terms of the First Lien Credit Agreement so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), (a) a report setting forth the information required by Section 1(a) of the Perfection Certificate (or confirming that there has been no change in such information since the later of the Closing Date or the last report delivered pursuant to this clause (a)) and (b) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list; and

(5) promptly, but subject to the limitations set forth in Section 6.10 and Section 10.09, such additional information regarding the business and financial affairs of any Loan Party or any Material Subsidiary that is a Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower’s (or any Parent Company’s) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower’s behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents or link and, upon the Administrative Agent’s request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the “Borrower Materials”) by posting the Borrower Materials on IntraLinks, SyndTrak, ClearPar or another similar electronic system (the “Platform”) and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to Holdings, their Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person’s securities (each, a “Public Lender”). The
Borrower hereby agrees that (i) at the Administrative Agent’s request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” will appear prominently on the first page thereof; (ii) by marking Borrower Materials “PUBLIC,” the Borrower will be deemed to have authorized the Administrative Agent, the Lenders to treat such Borrower Materials as containing only Public-Side Information (provided, however, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked “PUBLIC” and, except to the extent the Borrower notifies the Administrative Agent to the contrary, any Borrower Materials provided pursuant to Sections 6.01(1), 6.01(2) or 6.02(1) are permitted to be made available through a portion of the Platform designated as “Public Side Information”; and (iv) the Administrative Agent and the Arrangers shall be entitled to treat Borrower Materials that are not specifically identified as “PUBLIC” as being suitable only for posting on a portion of the Platform not designated as “Public Side Information.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials “PUBLIC.”

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product; provided that in the event that the Borrower does not provide information that otherwise would be required to be provided hereunder in reliance on the exclusions in this paragraph relating to violation of any obligation of confidentiality, the Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent promptly upon obtaining knowledge that such information is being withheld (but solely if providing such notice would not violate such obligation of confidentiality).

SECTION 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

(1) the occurrence of any Default; and

(2) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any violation by any Loan Party or any of its Subsidiaries of, or liability under, any Environmental Law or Environmental Permit, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.
SECTION 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and
(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clause (1) or (2) to the extent (other than with respect to the preservation of the existence of the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or disposition permitted by Article VII.

SECTION 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Borrower or any of the Restricted Subsidiaries excepted.

SECTION 6.07 Maintenance of Insurance. Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Borrower’s and the Restricted Subsidiaries’ properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried; provided that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Subject to Section 6.13(2), each such policy of insurance will, as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

SECTION 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and comply with the USA PATRIOT Act, sanctions administered by OFAC and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected individually or in the aggregate 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 shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).
SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants’ customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower’s expense; provided further that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower’s independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

SECTION 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower’s expense, subject to the provisions of the Collateral and Guarantee Requirement, the terms of the First Lien/Second Lien Intercreditor Agreement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) the designation of any existing direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) as a Restricted Subsidiary, (iii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Material Domestic Subsidiary or (iv) an Excluded Subsidiary that is a wholly owned Material Domestic Subsidiary ceasing to be an Excluded Subsidiary but continuing as a wholly owned Material Domestic Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien) but excluding Excluded Assets):

(a) within the days specified below after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion, cause each such Material Domestic Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and
(A) within sixty (60) days (or within ninety (90) days in the case of documents listed in Section 6.11(2)(b)) after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent items listed in Section 6.11(2)(b), *mutatis mutandis*, with respect to any supplements to the Security Agreement, a counterpart signature page to the Intercompany Note, Intellectual Property Security Agreements and other security agreements and documents (if applicable), as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date as amended and in effect from time to time), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to deliver to the Collateral Agent (or its agent, designee or bailee pursuant to the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement) any and all certificates representing Equity Interests (to the extent certificated and required to be delivered to the Collateral Agent (or its agent, designee or bailee pursuant to the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement)) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and, if applicable, a joinder to the Intercompany Note substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Material Domestic Subsidiary and required to be pledged pursuant to the Collateral Documents;

(C) within sixty (60) days (or within ninety (90) days in the case of documents listed in Section 6.11(2)(b)) after such formation, acquisition or designation, take and cause (i) the applicable Material Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement and (ii) to the extent applicable, each direct or indirect parent of such applicable Material Domestic Subsidiary, in each case, to take customary action(s) (including the filing of Uniform Commercial Code financing statements and delivery to the Collateral Agent (or its agent, designee or bailee pursuant to the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement) of stock and membership interest certificates to the extent certificated and required to be delivered to the Collateral Agent (or its agent, designee or bailee pursuant to the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement)) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) (or its agent, designee or bailee pursuant to the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days (or ninety (90) days in the case of documents described in Section 6.11(2)(b)) after the reasonable request therefor by the Administrative Agent, deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request;
provided that actions relating to Liens on real property are governed by Section 6.11(2) and not this Section 6.11(1).

(2) Material Real Property.

(a) Notice.

(i) Within ninety (90) days after the formation, acquisition or designation of a Material Domestic Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement, the Borrower will, or will cause such Material Domestic Subsidiary to, furnish to the Collateral Agent a description of any Material Real Property (other than any Excluded Asset(s)) owned by such Material Domestic Subsidiary.

(ii) Within ninety (90) days after the acquisition of any Material Real Property (other than any Excluded Asset(s)) by a Loan Party (other than Holdings), after the Closing Date, the Borrower will, or will cause such Loan Party to, furnish to the Collateral Agent a description of any such Material Real Property.

(b) Mortgages. The Borrower will, or will cause the applicable Loan Party to, provide the Collateral Agent with a Mortgage with respect to any Material Real Property that is the subject of a notice delivered pursuant to Section 6.11(2)(a), within ninety (90) days of the acquisition, formation or designation of such Material Domestic Subsidiary or the acquisition of such Material Real Property (or such longer period as the Collateral Agent may agree in its sole discretion), together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may deem reasonably necessary or desirable in order to create, except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a valid and subsisting perfected Lien on such Material Real Property in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent;

(ii) fully paid American Land Title Association Lender’s title insurance policies (or marked up title commitments having the effect of policies of title insurance) or the equivalent or other form available in each applicable jurisdiction (the “Mortgage Policies”) in form and substance, with endorsements available in the applicable jurisdiction without surveys or survey coverage (it being agreed that zoning reports from a nationally recognized zoning company shall be acceptable in lieu of zoning endorsements to title policies in any jurisdiction where there is a material difference in the cost of zoning reports and zoning endorsements) and in amounts, reasonably acceptable to the Collateral Agent (not to exceed the fair market value of the real properties covered thereby), issued, coinsured and reinsured by title insurers reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Liens permitted by Section 7.01 or such other Liens reasonably satisfactory to the Collateral Agent that do not have a material adverse impact on the use or value of the Mortgaged Properties, and providing for such other affirmative insurance and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably request and is available in the applicable jurisdiction;
(iii) customary Opinions of Counsel for the applicable Loan Parties in states in which such Material Real Properties are located, with respect to the enforceability and perfection of the Mortgage(s) and any related fixture filings and the due authorization, execution and delivery of the Mortgages, in form and substance reasonably satisfactory to the Collateral Agent;

(iv) a completed “Life of Loan” Federal Emergency Management Agency standard flood hazard determination with respect to each Material Real Property containing improved land addressed to the Collateral Agent and otherwise in compliance with the Flood Insurance Laws;

and

(v) as promptly as practicable after the reasonable request therefor by the Collateral Agent, environmental assessment reports and reliance letters (if any) that have been prepared in connection with such acquisition, designation or formation of any Material Domestic Subsidiary or acquisition of any Material Real Property; provided that there shall be no obligation to deliver to the Collateral Agent any environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.

(3) Notwithstanding anything to the contrary in this Section 6.11, the Collateral Agent may grant one or more extensions of time from any time period set forth herein for the taking of or causing any action, delivering or furnishing any notice, information, documents, insurance or opinions or for the creation and perfection of any Liens in its reasonable discretion and any such extensions may, in the sole discretion of the Collateral Agent, be effective retroactively.

SECTION 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

SECTION 6.13 Further Assurances and Post-Closing Covenant.

(1) Subject to the provisions of the Collateral and Guarantee Requirement, the terms of the First Lien/Second Lien Intercreditor Agreement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to satisfy the Collateral and Guarantee Requirement.
(2) As promptly as practicable, and in any event no later than one hundred and twenty (120) days after the Closing Date or such later date as the Administrative Agent reasonably agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Closing Date, (a) deliver the documents or take the actions required pursuant to sub clauses (i) through (v) of Section 6.11(2)(b) hereof with respect to any Material Real Properties listed in Schedule 1.01(2) and (b) deliver the documents or take the actions specified in Schedule 6.13(2), in each case except to the extent otherwise agreed by the Collateral Agent pursuant to its authority as set forth in the definition of the term “Collateral and Guarantee Requirement.”

SECTION 6.14 Use of Proceeds. The proceeds of the Initial Loans, together with the proceeds of the First Lien Initial Loans and cash on hand, will be used (i) to fund the Transactions and (b) any Revolving Loans will be used for working capital and general corporate purposes and for any other purpose not prohibited by the Loan Documents.

SECTION 6.15 Maintenance of Ratings. Use commercially reasonable efforts to maintain (1) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody’s, in each case in respect of the Borrower, and (2) a public rating (but not any specific rating) in respect of each Facility as of the Closing Date from each of S&P and Moody’s.

Article VII

Negative Covenants

So long as the Termination Conditions are not satisfied:

SECTION 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

SECTION 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “incur” and collectively, an “incurrence”) with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; provided that the Borrower may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, in each case, if (any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued pursuant to following clauses (A), (B) and (C), “Permitted Ratio Debt”):
(A) with respect to Indebtedness secured by the Collateral on a senior lien basis to the Second Lien Obligations, the First Lien Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than 4.50 to 1.00;

(B) with respect to Indebtedness secured by the Collateral on a basis that is pari passu with or junior in priority to the Second Lien Obligations, the Secured Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than 5.50 to 1.00; or

(C) with respect to Indebtedness that is not secured by the Collateral, including all Indebtedness of Restricted Subsidiaries that are not Guarantors, or any Disqualified Stock or Preferred Stock, the Total Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than 5.75 to 1.00, in each case, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

provided further that (I) Restricted Subsidiaries of the Borrower that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock under this Section 7.02(a) if, after giving pro forma effect to such incurrence or issuance (including a pro forma application of the net proceeds therefrom), the aggregate principal amount of Indebtedness, liquidation preference of Disqualified Stock and amount of Preferred Stock of such Restricted Subsidiaries incurred or issued pursuant to this Section 7.02(a), together with any principal amounts incurred or issued by such Restricted Subsidiaries under Section 7.02(b)(14)(a) and Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), in each case then outstanding, would exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (i) $625.0 million and (ii) 81.25% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis), (II) Indebtedness incurred under clause (A) of the definition of Permitted Ratio Debt, Permitted Ratio Debt in the form of Indebtedness (x) shall not mature earlier than the Original Maturity Date and (y) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Initial Loans on the date of incurrence of such Permitted Ratio Debt and (III) if any such Indebtedness in clause (A) of the definition of Permitted Ratio Debt consists of syndicated Dollar-denominated term loans secured by a Lien on the Collateral ranking pari passu with the Second Lien Obligations under this Agreement, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(b) (to the extent then applicable) as if such Indebtedness were Incremental Loans incurred pursuant to Section 2.14.

(b) The provisions of Section 7.02(a) will not apply to:

(1) Indebtedness under the Loan Documents (including Incremental Loans, Other Loans, Extended Loans and Replacement Loans);
(2) the incurrence by the Borrower and any Guarantor of Indebtedness pursuant to the First Lien Credit Documents or consisting of “Permitted Incremental Equivalent Debt” (or equivalent term) (as defined in the First Lien Credit Agreement) or any Refinancing Indebtedness in respect thereof (including any “Credit Agreement Refinancing Indebtedness” (or equivalent term) (as defined in the First Lien Credit Agreement)) in an aggregate outstanding principal amount not to exceed (A) $3.055 billion plus (B) $595,901,399.16 (plus (x)(i) the amount of any “Incremental Loans” and “Permitted Incremental Equivalent Debt” (or equivalent terms) (each, as defined in the First Lien Credit Agreement (as in effect on the date hereof)) permitted under Sections 2.14(4)(c) and 7.02 (or equivalent provisions) of the First Lien Credit Agreement (as in effect on the date hereof) and (ii) any Refinancing Indebtedness in respect thereof and (y) the amount of accrued interest, fees and premiums (including tender premium) and penalties (if any) with respect to any such Indebtedness under this clause (b)(2) refinanced, and fees, expenses, original issue discount and upfront fees incurred in connection with any such refinancing; provided that any First Lien Term Loan denominated in Euros incurred on the Closing Date shall be deemed to be incurred under (and will be subject to the limitations of) clause (B) of this Section 7.02(b)(2);

(3) the incurrence of Indebtedness by the Borrower and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in the preceding clauses (1) and (2)); provided that any such item of Indebtedness with an aggregate outstanding principal amount on the Closing Date in excess of $18.75 million shall be set forth on Schedule 7.02;

(4) the incurrence of Attributable Indebtedness and Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations) and Disqualified Stock incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock or Preferred Stock incurred or issued and outstanding under this clause (4) at such time, not to exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) $287.5 million and (II) 37.5% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis);

(5) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker’s acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers’ compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;
(6) the incurrence of Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts, other contingent consideration obligations and other deferred purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(7) the incurrence of Indebtedness by the Borrower and owing to a Restricted Subsidiary or the issuance of Disqualified Stock of the Borrower to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); provided that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans to the extent permitted by applicable law; provided further that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent such Disqualified Stock is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent permitted by Section 7.05; provided that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor to the extent permitted by applicable law; provided further that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Borrower or a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary); provided that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(11) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance, banker’s acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;
(a) Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 200.0% of the net cash proceeds received by the Borrower since the Closing Date from the issue or sale of Equity Interests of the Borrower or contributions to the capital of the Borrower, including through consolidation, amalgamation or merger (in each case, other than proceeds of Disqualified Stock and other than proceeds received from the Borrower or a Restricted Subsidiary) as determined in accordance with clauses (3)(b) and (3)(c) of Section 7.05(a) to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.05(a) or to make Permitted Investments (other than Permitted Investments specified in clause (1), (2) or (3) of the definition thereof); and

(b) Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (12)(b), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (I) $250.0 million and (II) 31.25% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis) plus, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased plus (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock, minus (iii) any General Debt Basket Reallocated Amount;

(13) the incurrence or issuance by the Borrower of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness (including any Designated Revolving Commitments) permitted under Section 7.02(a) and clauses (b)(3) and (12)(a) above, this clause (13) and clauses (14) and (30), or any successive Refinancing Indebtedness with respect to any of the foregoing:
(14) (a) the incurrence or issuance of:

(x) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary, incurred or issued to finance an acquisition or investment (or other purchase of assets), or

(y) Indebtedness, Disqualified Stock or Preferred Stock (I) of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement or (II) that is assumed by the Borrower or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets),

in an aggregate principal amount or liquidation preference, together with any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), not to exceed (i) the greater of $337.5 million and 43.75% of Consolidated EBITDA plus (ii) an unlimited amount so long as in the case of this clause (ii) only, either:

(A) with respect to Indebtedness secured by the Collateral on a senior basis to the Second Lien Obligations, the First Lien Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the greater of (I) 4.50 to 1.00 and (II) the First Lien Net Leverage Ratio immediately prior to giving effect to such incurrence of such Indebtedness;

(B) with respect to Indebtedness secured by the Collateral on a basis that is pari passu with or junior in priority to the Second Lien Obligations, the Secured Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the greater of (I) 5.50 to 1.00 and (II) the Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of such Indebtedness; or

(C) with respect to Indebtedness that is not secured by the Collateral, including all Indebtedness of Restricted Subsidiaries that are not Guarantors, or any Disqualified Stock or Preferred Stock, the Total Net Leverage Ratio for the Test Period preceding the date on which such Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the greater of (I) 5.75 to 1.00 and (II) the Total Net Leverage Ratio immediately prior to giving effect to such incurrence of such Indebtedness or the issuance of such Disqualified Stock or Preferred Stock;

provided that (x) with respect to such Indebtedness, Restricted Subsidiaries of the Borrower that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock under clause (14)(a) if, after giving pro forma effect to such incurrence or issuance (including a pro forma application of the net proceeds therefrom), the aggregate principal amount of Indebtedness, liquidation preference of Disqualified Stock and amount of Preferred Stock of such Restricted Subsidiaries incurred or issued pursuant to clause (14)(a), together with any principal amounts incurred, assumed or issued by such Restricted Subsidiaries under Section 7.02(a) and any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), in each case then outstanding, would exceed (as of the date of such indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (i)

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$625.0 million and (ii) 81.25% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis), (y) Indebtedness incurred under clause (A), such Indebtedness (I) shall not mature earlier than the Original Maturity Date and (II) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Initial Loans on the date of incurrence of such Indebtedness and (z) if any such Indebtedness under clause (i) or clause (ii)(A) consists of syndicated Dollar-denominated term loans secured by a Lien on the Collateral ranking pari passu with the Second Lien Obligations under this Agreement, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(b) (to the extent then applicable) as if such Indebtedness were Incremental Loans incurred pursuant to Section 2.14;

(b) so long as not created in contemplation of such acquisition or investment, (i) Indebtedness or Disqualified Stock that is assumed by the Borrower or any Restricted Subsidiary in connection with an acquisition or investment (or other purchase of assets) and (ii) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement, in each case in an aggregate principal amount or liquidation preference, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), not to exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is assigned or acquired) (A) the greater of $143.75 million and 18.75% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis) plus (B) an unlimited amount of Indebtedness, Disqualified Stock or Preferred Stock so long as, after giving pro forma effect to the assumption or acquisition of such Indebtedness, Disqualified Stock or Preferred stock and such acquisition or investment (or other purchase of assets), the First Lien Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis does not exceed 6.55 to 1.00;

(15) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(16) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by letters of credit or bank guarantees issued in connection herewith, any Credit Agreement Refinancing Indebtedness or Permitted Incremental Equivalent Debt, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;

(17) (a) the incurrence of any guarantee by the Borrower or a Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is permitted by this Agreement, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary is permitted by this Agreement;

(18) the incurrence of Indebtedness issued by the Borrower or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);
(19) Customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) The incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Restricted Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(21) Indebtedness incurred by a Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm’s-length commercial terms;

(22) The incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) The incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Guarantors in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (23), together with any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (I) $337.5 million and (II) 43.75% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis);

(24) The incurrence of Indebtedness by the Borrower or any Restricted Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) Qualified Securitization Facilities and, to the extent constituting Indebtedness, Receivables Financing Transactions;

(26) Guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;

(27) The incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;
(28) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(29) the incurrence of Indebtedness arising out of any Sale-Leaseback Transaction incurred in the ordinary course of business or consistent with industry practice;

(30) (a) Credit Agreement Refinancing Indebtedness and (b) Permitted Incremental Equivalent Debt;

(31) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Guarantors to fund working capital requirements in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (31), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) $50.0 million and (II) 6.25% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis); and

(32) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (31) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(2) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to clauses (2), (3), (4), (12), (13), (14), (23), (30) and (31) of Section 7.02(b) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount,
upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness).

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar equivalent principal amount of Indebtedness or liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower Dollar equivalent)); provided that if such Indebtedness, Disqualified Stock or Preferred Stock is issued to Refinance other Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased plus (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, plus (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness); provided, further, that for the avoidance of doubt, for purposes of the Dollar denominated restriction in Section 7.02(b)(2)(B), the principal amount of First Lien Term Loans incurred on the Closing Date hereof in Euros shall be calculated based on an exchange rate of 1.175347927 Dollars per Euro.

The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness or Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

SECTION 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve 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 (other than as part of the Transactions), except that:
(1) Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); provided that

   (a) the Borrower shall be the continuing or surviving Person,

   (b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and

   (c) in the case of a merger or consolidation of Holdings with and into the Borrower,

      (i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,

      (ii) Holdings shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower,

      (iii) no Event of Default exists at such time or after giving effect to such transaction and

      (iv) after giving effect to such transaction, a direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (B) pledge 100% of the Equity Interests of the Borrower held by such direct parent to the Administrative Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Administrative Agent and the Borrower;

(2) (a) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party,

(b) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; provided that a Loan Party shall be the continuing or surviving Person;

(c) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted; and

(d) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

provided that in the case of clause (d), the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of “Permitted Investments”;

(3) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary;
so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; provided that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower’s assets, is the transferee of such assets) (any such Person, a “Successor Borrower”):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and

(C) deliver to the Administrative Agent (I) an Officer’s Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower’s obligations under this Agreement),

(B) each Loan Party, unless it is the other party to such merger or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder,

(C) if reasonably requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, will, by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent and the Borrower), confirm that its obligations thereunder shall apply to the Successor Borrower’s obligations under this Agreement;

(iii) after giving pro forma effect to such incurrence, the Borrower would be permitted to incur at least $1.00 of additional Permitted Ratio Debt; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Borrower required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act;
provided further that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and in the case of the disposition of all or substantially all assets, the original Borrower will be released;

(5) so long as no Event of Default has occurred and is continuing or would result therefrom, Holdings may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; provided that (a) Holdings will be the continuing or surviving Person or (b) if:

(i) the Person formed by or surviving any such merger or consolidation is not Holdings,

(ii) Holdings is not the Person into which the applicable Person has been liquidated or

(iii) in connection with a disposition of all or substantially all of Holding’s assets, the Person that is the transferee of such assets is not Holdings (any such Person described in the preceding clauses (i) through (iii), a “Successor Holdings”), then the Successor Holdings will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower,

(C) pledge 100% of the Equity Interests of the Borrower held by such Successor Holding Entity to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower,

(D) if requested by the Administrative Agent, deliver, or cause the Borrower to deliver, to the Administrative Agent (I) an Officer’s Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Collateral Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Holdings required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement and in the case of the disposition of all or substantially all assets, the original Holdings will be released;
(6) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05;

(7) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 or a disposition that does not constitute any Asset Sale (other than a transaction described in clause (b) of the definition of Asset Sale);

(8) the Borrower, Holdings and any Restricted Subsidiary may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name; and

(9) the Loan Parties and the Restricted Subsidiaries may consummate the Transactions.

SECTION 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale unless:

(1) the Borrower or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of and

(2) except in the case of a Permitted Asset Swap, with respect to any Asset Sale pursuant to this Section 7.04 for a purchase price in excess of $62.5 million, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):

(a) any liabilities (as shown on the Borrower’s or any Restricted Subsidiary’s most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower’s or a Restricted Subsidiary’s balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Restricted Subsidiary);

(b) any securities, notes or other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;
(c) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (i) $193.75 million and (ii) 25.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a pro forma basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower’s option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value;

(d) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Borrower or a Restricted Subsidiary), to the extent that the Borrower and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale; or

(e) any Investment, Capital Stock, assets, property or capital or other expenditure of the kind referred to in Section 2.05(2)(b)(i).

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

SECTION 7.05 Restricted Payments.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower’s or any Restricted Subsidiary’s Equity Interests (in each case, solely in such Person’s capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(i) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(ii) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;
(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Junior Indebtedness with an aggregate outstanding principal amount in excess of the Threshold Amount, other than:

(i) Indebtedness permitted under clauses (7), (8) and (9) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Junior Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as “Restricted Payments”), unless, at the time of and immediately after giving effect to such Restricted Payment:

(1) in the case of a Restricted Payment described in clauses (A) and (B) above utilizing clause 3(a) or (g) below, no Event of Default under Section 8.01(1) or Section 8.01(6) will have occurred and be continuing or would occur as a consequence thereof;

(2) [reserved];

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments (including the fair market value of any non-cash amount) made by the Borrower and its Restricted Subsidiaries after the Closing Date (excluding Restricted Payments permitted by 7.05(b) other than clause (1) thereof), is less than the sum of (without duplication):

(a) 50.0% of the Consolidated Net Income of the Borrower and the Restricted Subsidiaries for the period (taken as one accounting period) commencing on April 3, 2017 to the end of the most recently ended fiscal quarter for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) preceding such Restricted Payment or, in the case such Consolidated Net Income for such period is a deficit, minus 100.0% of such deficit; plus

(b) 100.0% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by the Borrower and its Restricted Subsidiaries since the Closing Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 7.02(b)(12)(a)) from the issue or sale of:
(i) (A) Equity Interests of the Borrower, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

   (I) Equity Interests to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates, Immediate Family Members or any permitted transferees thereof) of the Borrower, its Subsidiaries or any Parent Company after the Closing Date to the extent such amounts have been applied to Restricted Payments made in accordance with Section 7.05(b)(4); and

   (II) Designated Preferred Stock; and

   (B) Equity Interests of Parent Companies, to the extent the proceeds of any such issuance or consideration for any such sale are contributed to the Borrower (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with Section 7.05(b)(4)); or

   (ii) Indebtedness of the Borrower or any Restricted Subsidiary, that has been converted into or exchanged for Equity Interests of the Borrower or any Parent Company;

   provided that this clause (b) will not include the proceeds from (w) Refunding Capital Stock (as defined below) applied in accordance with Section 7.05(b)(2) below, (x) Equity Interests or convertible debt securities of the Borrower sold to a Restricted Subsidiary, (y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (z) Excluded Contributions;

   (c) 100.0% of the aggregate amount of cash, Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Borrower following the Closing Date (including the fair market value of any Indebtedness contributed to the Borrower or its Subsidiaries for cancellation) or that becomes part of the capital of the Borrower through consolidation, amalgamation or merger following the Closing Date, in each case not involving cash consideration payable by the Borrower (other than (x) net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 7.02(b)(12)(a), (y) cash, Cash Equivalents and marketable securities or other property that are contributed by a Restricted Subsidiary or (z) Excluded Contributions); plus

   (d) 100.0% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by the Borrower or a Restricted Subsidiary by means of:

   (i) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary) of, or other returns on investments from, Restricted Investments made by the Borrower or its Restricted Subsidiaries (including cash distributions and cash interest received in respect of Restricted Investments) and
repurchases and redemptions of such Restricted Investments from the Borrower or its Restricted Subsidiaries (other than by the Borrower or a Restricted Subsidiary) and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Borrower or its Restricted Subsidiaries, in each case after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof);

(ii) the sale (other than to the Borrower or a Restricted Subsidiary) of Equity Interests of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but including such cash or fair market value to the extent exceeding the amount of such Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof); or

(iii) any returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a Dollar-denominated or ratio based Basket (to the extent in excess of the original amount of the Investment); plus

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Borrower or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Borrower or a Restricted Subsidiary after the Closing Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of cash or fair market value; plus

(f) 100% of the aggregate amount of any Excluded Proceeds (except to the extent utilized to repurchase, redeem, defease, acquire, or retire for value any Junior Indebtedness pursuant to clause (b)(13) below); plus

(g) $125.0 million.

(b) The provisions of Section 7.05(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Section 7.05;
(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon (“Treasury Capital Stock”) or (ii) Junior Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Borrower or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) (“Refunding Capital Stock”) and (y) within 120 days of such sale or issuance,

(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Restricted Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance, and

(c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Borrower was permitted under clause (6)(a) or (b) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount per annum no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Junior Indebtedness of the Borrower or a Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Junior Indebtedness of the Borrower or a Guarantor or Disqualified Stock of the Borrower or a Guarantor within 120 days of such sale, issuance or incurrence,

(b) Disqualified Stock of the Borrower or a Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock or Junior Indebtedness of the Borrower or a Guarantor, made within 120 days of such sale, issuance or incurrence,

(c) Disqualified Stock of a Restricted Subsidiary that is not a Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Guarantor, made within 120 days of such sale or issuance, that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 7.02, and

(d) any Junior Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the
Borrower, any of its Subsidiaries or any Parent Company in connection with the Transactions; provided that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $31.25 million in any calendar year (increasing to $62.5 million following an underwritten public Equity Offering by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; provided further that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of Section 7.05(a); plus

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that are foregone in exchange for the receipt of Equity Interests of the Borrower or any Parent Company pursuant to any compensation arrangement, including any deferred compensation plan; plus

(c) the cash proceeds of life insurance policies received by the Borrower or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Borrower (other than in the form of Disqualified Stock)) after the Closing Date; minus

(d) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);

provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; provided further that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;

(5) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Borrower or any Restricted Subsidiary or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 7.02; provided, that after giving pro forma effect to such dividend or distribution, including the amount thereof in Consolidated Interest Expense solely for the purposes of this clause (5), the Borrower would have had an Interest Coverage Ratio of at least 1.75 to 1.00;
(a) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower or any Restricted Subsidiary after the Closing Date;

(b) the declaration and payment of dividends or distributions to any Parent Company, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by such Parent Company after the Closing Date; provided that the amount of dividends and distributions paid pursuant to this clause (b) will not exceed the aggregate amount of cash actually contributed to the Borrower from the sale of such Designated Preferred Stock; or

(c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this Section 7.05(b);

provided that in the case of each of clauses (a), (b) and (c) of this clause (6), for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a pro forma basis, the Borrower would have had a Interest Coverage Ratio of at least 1.75 to 1.00;

(7) (a) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Restricted Subsidiary or any Parent Company,

(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and

(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any Parent Company in connection with such Person’s purchase of Equity Interests of the Borrower or any Parent Company; provided that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Borrower’s common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company’s common equity), following the first public offering of the Borrower’s common equity or the common equity of any Parent Company after the Closing Date, in an aggregate amount per annum not to exceed 6.0% of Market Capitalization;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) $125.0 million; provided that if this clause (10) is utilized to make a Restricted Investment, the amount deemed to be utilized under this clause (10) will be the amount of such Restricted Investment at any time outstanding (with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of “Investment”);
(11) distributions or payments of Securitization Fees;
(12) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto;
(13) the repurchase, redemption, defeasance, acquisition or retirement for value of any Junior Indebtedness from Excluded Proceeds (except to the extent utilized to make Restricted Payments pursuant to clause (f) of Section 7.05(a));

(14) the declaration and payment of dividends or distributions by the Borrower or any Restricted Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes and other fees and expenses, required to maintain their corporate or other legal existence;

(b) for any taxable period (or portion thereof) for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a “Tax Group”), to pay the portion of any U.S. federal, foreign, state or local income Taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); provided that for each taxable period, (A) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (B) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by an Unrestricted Subsidiary to the Borrower or any Restricted Subsidiary for such purpose;

(c) for any taxable period (or portion thereof) for which the Borrower and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes (amounts permitted to be distributed, loaned or advanced pursuant to this clause (c), “Tax Distributions”): cash distributions from the Borrower at such times and in such amounts necessary to permit each Parent Company to make cash distributions to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the sum of (I) any non-income Taxes payable by such member with respect to the Borrower and (II) the product of (A) the taxable income of the Borrower allocable to such member for such period (assuming the Borrower for this purpose is a regarded entity for U.S. federal income tax purposes), determined by taking into account any basis step-up in the assets of the Borrower or any of its Subsidiaries resulting from the Transactions (other than any basis adjustment arising under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Borrower or
Parent Company for such taxable period (taking into account the Medicare Contribution Tax on net investment income tax, the character of the taxable income in question (e.g. long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon, including the limitations in Sections 67 and 68 of the Code) and adjusted to the extent necessary to calculate federal, state and local tax liability separately so as to take into account the calculation under the applicable state and local tax laws of taxable income and taxable losses and the extent to which such losses may offset such income) increased if necessary to apply alternative minimum tax rates and rules in years in which the alternative minimum tax applies (or would apply based on the assumptions stated herein) to the relevant distributee if the distributee were an individual or a corporation, assuming each distributee’s sole asset is its direct or indirect interest in the Borrower); provided that the amount of any Tax Distribution permitted under this clause (c) shall be reduced by the amount of any income taxes that are paid directly by the Borrower and attributable to such member and would otherwise have been taken into account in the calculation of such Tax Distribution; provided further that (1) Tax Distributions in respect of a taxable year may be made based on estimates of taxable income, with adjustments being made to subsequent Tax Distributions to reflect differences between such estimates and final calculations of taxable income, (2) Tax Distributions may be increased by an amount sufficient to enable any Parent Company to pay any Taxes arising from the Partnership Audit Rules and attributable to the operations and activities of Borrower and its Subsidiaries (calculated by assuming that such Parent Company does not make the election described in Section 6226 of the Code (or any analogous state, local or non-U.S. law) and is unable to reduce the amount of any Tax pursuant to the provisions of Section 6225 of the Code (or any analogous state, local or non-U.S. law)), and (3) if, following an audit or examination, there is an adjustment that would affect the calculation of taxable income or taxable loss for a given period or portion thereof, or in the event that a Parent Company files an amended tax return which has such effect, then, additional Tax Distributions may be made (increased by an additional amount estimated to be sufficient to cover any interest or penalties) to give effect to such adjustment or amended tax return; and

(d) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company, and any payroll, social security or similar taxes thereof;

(e) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company;

(f) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(g) amounts that would be permitted to be paid directly by the Borrower or its Restricted Subsidiaries under Section 7.07(b) (other than clause 2(a) thereof);
(h) interest or principal on Indebtedness the proceeds of which have been contributed to the Borrower or any Restricted Subsidiary or that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with Section 7.02;

(i) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 7.05 if made by the Borrower; provided that:

(i) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment,

(ii) such Parent Company must, promptly following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Borrower or a Restricted Subsidiary or (B) the merger, amalgamation, consolidation or sale of the Person formed or acquired into the Borrower or a Restricted Subsidiary (to the extent not prohibited by Section 7.03) in order to consummate such Investment, acquisition or investment,

(iii) such Parent Company and its Affiliates (other than the Borrower or any Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Agreement,

(iv) any property received by the Borrower may not increase amounts available for Restricted Payments pursuant to clause (3) of Section 7.05(a), and

(v) to the extent constituting an Investment, such Investment will be deemed to be made by the Borrower or such Restricted Subsidiary pursuant to another provision of this Section 7.05 (other than pursuant to clause (9) of this Section 7.05(b)) or pursuant to the definition of “Permitted Investments” (other than clause (9) thereof); and

(j) amounts payable pursuant to the Transaction Documents;

(15) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company;

(17) (a) Restricted Payments described in clauses (A) and (B) of the definition thereof contained in Section 7.05(a); provided that after giving pro forma effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 4.50 to 1.00 and (b)
Restricted Payments described in clauses (C) and (D) of the definition thereof contained in Section 7.05(a); provided that after giving pro forma effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 4.50 to 1.00;

(18) payments made for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.07;

(19) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;

(20) the payment of dividends, other distributions and other amounts by the Borrower to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest or principal (including AYHD Payments) on Indebtedness, the proceeds of which have been permanently contributed to the Borrower or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with this Agreement; provided that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Borrower for the incurrence of such Indebtedness;

(21) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate amount since the date of this Agreement not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Borrower or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(22) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Borrower’s common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and

(23) the refinancing of any Junior Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness.

provided that at the time of, and after giving effect to, any Restricted Payment pursuant to clause (17) in respect of Restricted Payments described in clauses (A) or (B) of the definition thereof, no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.
The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower’s election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement.

SECTION 7.06 Change in Nature of Business. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.

SECTION 7.07 Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "Affiliate Transaction") involving aggregate payments or consideration in excess of $93.75 million, unless such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm’s-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view.

(b) The foregoing restriction will not apply to the following:

(1) (a) transactions between or among the Borrower and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; provided that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement;

(2) (a) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term “Restricted Payments,” including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition, but excluding any Restricted Payment permitted by Section 7.05(14)(g)), (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder and (c) Indebtedness permitted by Section 7.02;

(3) (a) the payment of management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreement (including any unpaid management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreement, or any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management Services Agreement as in effect on the Closing Date,
(b) the payment of indemnification and similar amounts to, and reimbursement of expenses to, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors,

c) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice,

d) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company and

e) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company;

(4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary;

(5) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm’s-length basis;

(6) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the applicable agreement as in effect on the Closing Date);

(7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; provided that the existence of, or the performance
by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(11) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto;

(12) payments by the Borrower or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(13) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and cancellation of any thereof) of the Borrower, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith; and any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) that are, in each case, approved by the Borrower in good faith;
(14) investments by Affiliates in securities or Indebtedness of the Borrower or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Borrower or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(15) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(16) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Borrower (and any Parent Company) and its Subsidiaries; provided that in each case the amount of such payments by the Borrower and its Subsidiaries are permitted under Section 7.05(b)(14);

(17) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(18) intellectual property licenses in the ordinary course of business or consistent with industry practice;

(19) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;

(20) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Borrower or any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;

(21) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer’s Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer’s Certificate;

(22) (a) transactions with a Person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Restricted Subsidiary or any Parent Company;
(23) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(24) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;

(25) investments by any Investor or Parent Company in securities or Indebtedness of the Borrower or any Guarantor;

(26) payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness), (b) the First Lien Loans or (c) other Indebtedness, Disqualified Stock or Preferred Stock of the Borrower and its Subsidiaries held by Affiliates; provided that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith;

(27) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(28) any transactions and payments contemplated by, and the performance by the Parent Borrower or any Restricted Subsidiary of any other obligations under, each of the Transaction Documents (and any amendment thereto and similar agreements or arrangements that it may enter into thereafter), including any Restricted Payment made in connection with such transactions or used to fund amounts owed to Affiliates (including Restricted Payments to any Parent Company to permit payment by such Parent Company of such amounts); provided that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any such amendment to such Transaction Document or under such similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (28) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Borrower to the Lenders when taken as a whole (as compared to such Transaction Document in effect on the Closing Date).

SECTION 7.08 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to:

1. (a) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

   (b) pay any Indebtedness owed to the Borrower or to any Restricted Subsidiary that is a Guarantor;

2. make loans or advances to the Borrower or to any Restricted Subsidiary that is a Guarantor;
(3) sell, lease or transfer any of its properties or assets to the Borrower or to any Restricted Subsidiary that is a Guarantor; or

(4) with respect to (a) any Subsidiary Guarantor (and, solely to the extent this clause (4)(a) relates to Hedging Obligations of Restricted Subsidiaries, the Borrower), Guaranty the Obligations or (b) with respect to the Borrower or any Subsidiary Guarantor, create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents;

provided that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.08(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(1) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation;

(2) the First Lien Credit Documents;

(3) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clauses (3) and 4(b) above on the property so acquired;

(4) applicable Law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;

(6) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(7) [reserved];

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;
provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not
Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 7.02;
provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint
venture or its members or entered into in the ordinary course of business;
customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with
respect to intellectual property and other agreements;
restrictions created in connection with any Qualified Securitization Facility or Receivables Financing Transaction that, in the good
faith determination of the Board of Directors of the Borrower, are necessary or advisable to effect such Qualified Securitization Facility or
Receivables Financing Transaction;
restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement
to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice;
provided that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are
subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the
Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;
customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted
Subsidiary;
customary provisions restricting assignment of any agreement;
restrictions arising in connection with cash or other deposits permitted under Section 7.01;
any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or
issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more
restrictive in any material respect, taken as a whole, with respect to the Borrower or any Restricted Subsidiary than (A) the restrictions contained
in the Loan Documents and the First Lien Credit Documents as of the Closing Date or (B) those encumbrances and other restrictions that are in
effect on the Closing Date with respect to the Borrower or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are
not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or
(iii) will not materially impair the Borrower’s ability to make payments on the Obligations when due, in each case in the good faith judgment of
the Borrower;
(i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4) and any
permitted refinancing in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into
in the ordinary course of business or consistent with industry practice;
(19) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.08;

(20) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; provided that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Borrower or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(21) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (20) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(22) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; provided that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and

(23) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 7.02 is incurred.

SECTION 7.09 Accounting Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any change in fiscal year; provided, however, that the Borrower may, upon written notice to the Administrative Agent, (i) change its fiscal year to a calendar year ending December 31 and (ii) change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, and in the case of each of (i) and (ii), the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 7.10 Modification of Terms of Subordinated Indebtedness. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Junior Indebtedness that is contractually subordinated in right of payment and having an aggregate outstanding principal amount greater than the Threshold Amount (other than as a result of any Refinancing Indebtedness in respect thereof) with respect to the payment subordination thereof, without the consent of the Administrative Agent; provided, however, that no amendment, modification or change of any term or condition of any Junior Indebtedness permitted by any subordination provisions set forth in the applicable Junior Indebtedness or any other stand-alone subordination agreement in respect thereof shall be deemed to be materially adverse to the interests of the Lenders.
SECTION 7.11 Holdings. Holdings shall not engage in any material operating or business activities; provided that the following and any activities incidental thereto shall be permitted in any event:

(i) its ownership of the Equity Interests of the Borrower and its other Subsidiaries, including receipt and payment of Restricted Payments and other amounts in respect of Equity Interests,

(ii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes relating to such maintenance),

(iii) the performance of its obligations with respect to the Transactions, the Transaction Documents, the Loan Documents, the First Lien Credit Documents and any other documents governing Indebtedness permitted hereby,

(iv) any public offering of its common equity or any other issuance, registration or sale of its Equity Interests,

(v) financing activities, including the issuance of securities, incurrence of debt, receipt and payment of dividends and distributions, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Borrower and its other Subsidiaries,

(vi) if applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries,

(vii) holding any cash or property (but not operate any property),

(viii) providing indemnification to officers and directors,

(ix) merging, amalgamating or consolidating with or into any Person (in compliance with Section 7.03), (x) repurchases of Indebtedness through open market purchases and Dutch auctions,

(x) activities incidental to Permitted Acquisitions or similar Investments consummated by the Borrower and the Restricted Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or Investments incidental to such Permitted Acquisitions or similar Investments,

(xi) any transaction with the Borrower and/or any Restricted Subsidiary to the extent expressly permitted under this Section 7, and

(xii) any activities incidental or reasonably related to the foregoing.
SECTION 8.01 **Events of Default.** Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an "**Event of Default**":

1. **Non-Payment.** The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

2. **Specific Covenants.** The Borrower, any Subsidiary Guarantor or, in the case of Section 7.11, Holdings, fails to perform or observe any term, covenant or agreement contained in Section 6.03(1), 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; or

3. **Other Defaults.** The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

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

5. **Cross-Default.** The Borrower or any Restricted Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower or any Restricted Subsidiary), 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 all of such Indebtedness to be made, prior to its stated maturity; provided that (A) such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02 and (B) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; provided, further, that no such event (other than the failure to make a principal payment at stated final maturity) under any Senior Priority Debt Facility (as defined in the First Lien/Second Lien Intercreditor Agreement) shall constitute a Default or Event of Default under this clause (5) until the Indebtedness under such Senior Priority Debt Facility shall have been accelerated as a result of such event; or
(6) **Insolvency Proceedings, etc.** The Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) **Judgments.** There is entered against the Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not paid or covered by insurance or indemnities as to which the insurer or indemnity has been notified of such judgment or order and the applicable insurance company or indemnity has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(8) **ERISA.** (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates 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, or (c) with respect to a Foreign Plan, a termination, withdrawal or noncompliance with applicable Law or plan terms occurs, except, with respect to each of the foregoing clauses of this Section 8.01(8), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) **Invalidity of Loan Documents.** Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason (other than (a) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions) ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04) or (ii) as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions; or
(10) **Collateral Documents.** Any Collateral Document with respect to a material portion of the Collateral after delivery thereof pursuant to Section 4.01, 6.11, 6.13 or pursuant to the provisions of any Collateral Document for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, or any Lien purported to be created by any Collateral Document with respect to a material portion of the Collateral shall be asserted in writing by any Loan Party (prior to the satisfaction of the Termination Conditions) not to be, a valid and perfected Lien with the priority required by such Collateral Document (or other security purported to be created on the applicable Collateral) on, and security interest in, any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent (or their respective agents, designees or bailees in accordance with the terms of the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement) to maintain possession of Collateral actually delivered to the Collateral Agent (or its agent, designee or bailee pursuant to the First Lien/Second Lien Intercreditor Agreement and/or any other Intercreditor Agreement) and pledged under the Collateral Documents, to file Uniform Commercial Code amendments relating to a Loan Party’s change of name or jurisdiction of formation (solely to the extent that the Borrower provides the Collateral Agent written notice thereof in accordance with the Security Agreement, and the Collateral Agent and the Borrower have agreed that the Collateral Agent will be responsible for filing such amendments) or continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender’s title insurance policy and such insurer has not denied coverage; or

(11) **Change of Control.** There occurs any Change of Control.

SECTION 8.02 **Remedies upon Event of Default.** Subject to Section 8.04, if any Event of Default occurs and is continuing, the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

1. declare the Commitments of each Lender to be terminated, whereupon such Commitments will be terminated;
2. declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
3. [reserved]; and
4. 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 actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto (the “Bankruptcy Code”), the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable without further act of the Administrative Agent or any Lender.

SECTION 8.03 **Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in clause (a) of the proviso to Section 8.02), subject to any Intercreditor Agreement then in effect, any amounts received on account of the Obligations will 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 amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, the Obligations under Secured Hedge Agreements and Cash Management Obligations under Secured Cash Management Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

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 paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party.

**Article IX**

**Administrative Agent and Other Agents**

SECTION 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender hereby irrevocably appoints JPMorgan Chase Bank, N.A., to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.07, 9.11, 9.12, 9.15 and 9.16) are solely for the benefit of the Administrative Agent and the Lenders and the Borrower shall not have rights as a third-party beneficiary of any such provision. The Administrative Agent hereby represents and warrants that it is either (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of Treasury Regulations Section 1.1441-1(b)(2)(ii) or (ii) a Withholding U.S. Branch.

(2) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a Lender and a potential Hedge Bank or Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of
or in 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 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X with respect to the Administrative Agent (including Sections 10.04 and 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including any Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

SECTION 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (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.

SECTION 9.03 Exculpatory Provisions. The Administrative Agent and Collateral Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, each Agent (including the Administrative Agent):

1. shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent or Arranger is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and 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;

2. 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 such 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 no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
(3) 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 the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender, or an Issuing Bank.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, 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. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each Arranger is named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Loan Documents or the transactions contemplated hereby and thereby; it being understood and agreed that each Arranger shall be entitled to all indemnification and reimbursement rights in favor of the Arrangers as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, each Arranger shall not, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

SECTION 9.04 Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent shall not have
any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

SECTION 9.05 Certain Rights of the Administrative Agent. If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders.

SECTION 9.06 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.07 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Agent-Related Persons of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. Notwithstanding anything to the contrary in this Section 9.07 or Section 9.15, the Administrative Agent shall not delegate to any Supplemental Administrative Agent responsibility for receiving any payments under any Loan Document for the account of any Lender, which payments shall be received directly by the Administrative Agent, without prior written consent of the Borrower (not to unreasonably withheld or delayed).
SECTION 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in proportion to their respective Pro Rata Shares for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent’s or any other Agent-Related Person’s gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 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 the Borrower, provided that such reimbursement by the Lenders shall not affect the Borrower’s continuing reimbursement obligations with respect thereto, provided further that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive the payment of all Obligations and the resignation of the Administrative Agent.

SECTION 9.09 The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a “Lender” and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term “Lender,” “Required Lenders” or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (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.

SECTION 9.10 [Reserved].

SECTION 9.11 Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 Business Days prior written notice to the Lenders and the Borrower. If the Administrative Agent becomes subject to a Lender-Related Distress Event, then the
Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent becomes subject to an Agent-Related Distress Event, then the Borrower may remove the Administrative Agent from such role upon 15 days’ prior written notice to the Lenders. Such resignation or removal shall take effect upon the appointment of a successor Administrative Agent as provided below.

Notwithstanding anything to the contrary in this Agreement, no successor Administrative Agent shall be appointed unless such successor Administrative Agent represents and warrants that it is (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of U.S. Treasury Regulations Section 1.1441-1, or (ii) a Withholding U.S. Branch.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (provided that the Borrower’s approval shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed within such 30 Business Day period, the Administrative Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, provided that the Borrower’s consent shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing), shall then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 35th Business Day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent’s resignation shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor’s appointment as Administrative Agent hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.11).
The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

SECTION 9.12 Collateral Matters. Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorizes and directs the Administrative Agent and the Collateral Agent to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required Lenders or the Required Facility Lenders, as applicable, in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders or the Required Facility Lenders, as applicable, of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Collateral Agent’s authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in this Section 9.12, Section 7.04 and Section 10.24, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower’s expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents, this Section 9.12, Section 7.04 and Section 10.24.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 7.04, Section 10.24 or in any of the Collateral Documents, it being understood and

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agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent’s own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 9.13 [Reserved].

SECTION 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans 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, any Issuing Bank and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

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

and 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 the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender 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 or Issuing Bank in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest 193
upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent
interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to
consume such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles
to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the
Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be
governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the
limitations on actions by the Required Lenders contained in clauses (a) through (i) of the first proviso to Section 10.01(1) of this Agreement), (iii) the
Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which
each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition
vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any
further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a
result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid
by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt
instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be
cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction
denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in
case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents,
or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers
or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith,
the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole
discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such
additional individual or institution being referred to herein individually as a “Supplemental Administrative Agent” and collectively as “Supplemental
Administrative Agents”).

(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and
every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or
conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the
extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect
to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and
necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the
Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to
the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent
shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

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(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

SECTION 9.16 Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into any Intercreditor Agreement to the extent contemplated by the terms hereof, and the parties hereto acknowledge that such Intercreditor Agreement is binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements, (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Intercreditor Agreements and to subject the Liens on the Collateral securing the Obligations to the provisions thereof and (c) without any further consent of the Lenders, hereby authorizes and instructs the Administrative Agent and the Collateral Agent to negotiate, execute and deliver on behalf of the Secured Parties any intercreditor agreement or any amendment (or amendment and restatement) to the Collateral Documents or any Intercreditor Agreement contemplated hereunder (including any such amendment (or amendment and restatement) of the First Lien/Second Lien Intercreditor Agreement or other intercreditor agreement to provide for the incurrence of any Indebtedness permitted hereunder that will be secured (x) on a senior lien, junior lien or pari passu basis to the Obligations and/or (y) on a junior lien or pari passu basis to any Indebtedness pursuant to the First Lien Credit Documents). In addition, each Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to enter into (i) any amendments to any Intercreditor Agreements, and (ii) any other intercreditor arrangements, in the case of clauses (i) and (ii) to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required or permitted by this Agreement (including any such amendment (or amendment and restatement) of the First Lien/Second Lien Intercreditor Agreement or other intercreditor agreement to provide for the incurrence of any Indebtedness permitted hereunder that will be secured (x) on a senior lien, junior lien or pari passu basis to the Obligations and/or (y) on a junior lien or pari passu basis to any Indebtedness pursuant to the First Lien Credit Documents). Each Secured Party acknowledges and agrees that any of the Administrative Agent and Collateral Agent (or one or more of their respective Affiliates) may (but are not obligated to) act as the “Debt Representative” or like term for the holders of Credit Agreement Refinancing Indebtedness under the security agreements with respect thereto or any Intercreditor Agreement then in effect. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9.17 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this
Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

SECTION 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Article X

Miscellaneous

SECTION 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than (x) with respect to any amendment or waiver contemplated in clause (i) below (to the extent permitted by Section 2.14), which shall only require the consent of the Required Facility Lenders under the applicable Facility or Facilities, as applicable (and not the Required Lenders) and (y) with respect to any amendment or waiver contemplated in clauses (a), (b) or (c), which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) or (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible, however, to the extent the final form of such waiver, consent or amendment has been delivered to the Administrative Agent at least one Business Day prior to the proposed effectiveness of the consents by the Lenders party thereto, the Administrative Agent shall acknowledge such waiver, consent or amendment (i) immediately, in the case of any amendment which does not require the consent of any existing Lender under this Agreement or (ii) otherwise, within two hours of the time copies of the Required Lender consents or other applicable Lender consents required by this Section 10.01 have been provided to the Administrative Agent; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:
(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums: (i) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans, (ii) the waiver of any Default or Event of Default, and (iii) any change to the definition of “First Lien Net Leverage Ratio,” “Secured Net Leverage Ratio,” “Total Net Leverage Ratio,” “Interest Coverage Ratio” or, in each case, in the component definitions thereof;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or any fees or other amounts payable hereunder or under any other Loan Document to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a reduction in any rate of interest or any fees: any change to the definition of “First Lien Net Leverage Ratio,” “Secured Net Leverage Ratio,” “Total Net Leverage Ratio,” “Interest Coverage Ratio,” or, in each case, in the component definitions thereof; provided that only the consent of (A) the Required Lenders shall be necessary to amend the definition of “Default Rate” and (B) the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), change any provision of this Section 10.01 or the definition of “Required Lenders” or “Required Facility Lenders,” “Pro Rata Share” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents or Section 2.13 or 8.03, without the written consent of each Lender directly and adversely affected thereby;

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) [reserved];

(h) [reserved];

(i) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding (subject to the requirements of Section 2.14) with respect to Incremental Loans, but excluding the rate of interest applicable thereto which shall be subject to clause (c) above) which directly affects Lenders of one or more Incremental Loans and does not directly affect Lenders under any other Facility, in each case, without the written consent of the
Required Facility Lenders under such applicable Incremental Loans (and in the case of multiple Facilities which are affected, such Required Facility Lenders shall consent together as one Facility); provided, however, that, to the extent permitted under Section 2.14, no amendments or waivers described in this clause (i) shall require the consent of the Required Lenders or any other Lenders and shall only require the consent of the Required Facility Lenders under such applicable Incremental Loans, including to the extent such amendment or waiver includes provisions that benefit the Lenders under any other Facility and are not adverse to such other Lenders;

provided that:

(I) [reserved];

(II) [reserved]

(III) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(IV) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

provided further that notwithstanding the foregoing:

(A) [reserved];

(B) no Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement (i) that is for the purpose of adding the holders of Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Permitted Indebtedness that is Secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and provided that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Intercreditor Agreement in connection with joinders and supplements; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;
(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time;

(E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (or the Collateral Agent, as applicable) to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least five (5) Business Days’ prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; provided that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Incremental Loans, any borrowing of Other Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively; and

(F) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, (i) effect changes to any Mortgage as may be necessary or appropriate in the opinion of the Collateral Agent and (ii) effect changes to this Agreement that are necessary and appropriate to effect the offering process set forth in Section 2.05(1)(e).

(2) In addition, notwithstanding anything to the contrary contained in this Section 10.01, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Loans of any Class ("Replaced Loans") with replacement term loans ("Replacement Loans") hereunder; provided that

(a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses incurred in connection with such refinancing of Replacement Loans, and

(b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) shall not be higher than the All-In Yield for such Replaced Loans (or similar interest rate spread applicable to such Replacement Loans) immediately prior to such refinancing.
(c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing, and

(d) all other terms (other than with respect to pricing, interest rate margins, fees, discounts, rate floors and prepayment or redemption terms) applicable to such Replacement Loans shall either, at the option of the Borrower, (i) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Replacement Loans (as determined by the Borrower in good faith) or (ii) if not otherwise consistent with the terms of such Replaced Loans, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Replaced Loans, except with respect to covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing.

Each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents and related documents executed by Loan Parties in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein) and

(b) if the Administrative Agent and the Borrower shall have jointly identified an obvious error, mistake, ambiguity, incorrect cross-reference or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (2) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02, and
(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMissions FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. IN no event shall the Administrative Agent or any of its Agent-Related Persons or any Arranger (collectively, the “Agent Parties”) have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).
(5) **Change of Address.** Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private-Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

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

**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.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided further that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.
SECTION 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs and to the extent not paid or reimbursed on or prior to the Closing Date, to pay or reimburse the Administrative Agent and the Arrangers for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and such Arrangers incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of a single U.S. counsel and, if necessary, a single local counsel in each relevant material jurisdiction, and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) Business Days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each other Lender, the Arrangers and their respective Related Persons (collectively, the “Indemnitees”) from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant material jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any actual or threatened claim, litigation, investigation or proceeding relating to the Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “Indemnified Liabilities”); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in
fulfilling its role as an administrative agent or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnites or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), 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 or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) Business Days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender and the repayment, satisfaction or discharge of all the Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof.

SECTION 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect.

SECTION 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and registered assigns permitted hereby, except that neither Holdings nor the Borrower may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent.
and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an assignee in accordance with the provisions of Section 10.07(b) (such an assignee, an “Eligible Assignee”) and (A) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, in accordance with the provisions of Section 10.07(h), (B) in the case of any Eligible Assignee that is Holdings, the Borrower or any Subsidiary of the Borrower, in accordance with the provisions of Section 10.07(l), or (C) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, in accordance with the provisions of Section 10.07(k), (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) (or in the case of any such attempted assignment or transfer to a Disqualified Institution shall be subject to the provisions set forth in the fourth sentence of the definition of “Lender”). 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, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** 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 Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

   (A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

   (B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $500,000 unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned (it being understood that assignments under separate Facilities shall not be required to be made on a pro rata basis).
(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that (x) consent for any affiliate of a Disqualified Institution that is not a Disqualified Institution may be withheld, (y) the Borrower shall be deemed to have consented to any assignment of all or a portion of the Loans unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice of a failure to respond to such request for assignment and (z) no consent of the Borrower shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(h), (k) or (l); and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; provided that no consent of the Administrative Agent shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07 (h), (k) or (l).

(iv) **Assignment and Assumption.** 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), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). Other than in the case of assignments pursuant to Section 10.07(l), the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all applicable tax forms.

(v) **No Assignments to Certain Persons.** No such assignment shall be made (A) to Holdings, the Borrower or any of the Borrower’s Subsidiaries except as permitted under Sections 2.05(1)(e) and 10.07(l), (B) subject to Sections 10.07(h), (k) and (l) below, to any Affiliate of the Borrower, (C) to a natural person or (D) to any Disqualified Institution.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07 (and, in the case of an Affiliated Lender or a Person that, after giving effect to such assignment, would become an Affiliated Lender, to the requirements of clause (h) of this Section 10.07), from and after the effective date specified in each Assignment and Assumption, other than in connection with an assignment pursuant to Section 10.07(l), (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning
Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent’s Office a copy of each Assignment and Assumption delivered to it, each Affiliated Lender Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender, nor shall the Administrative Agent be obligated to monitor the aggregate amount of the Loans or Incremental Loans held by Affiliated Lenders.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower and its Affiliates or a Disqualified Institution) (each, a “Participant”) in all or a portion of such Lender’s rights or obligations under this Agreement owing to it; provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; 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 the first proviso to Section 10.01(1) (other than clause (i) thereof) that directly and adversely affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable) as though it were a Lender; provided that any forms required to be provided under Section 3.01(3) shall be provided solely to the participating Lender), 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 subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; provided that such Participant shall agree to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 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 the Borrower’s prior written consent. Each Lender that sells a participation
shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations thereunder on which is entered the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes or such disclosure is otherwise required under Treasury Regulations Section 5f.103-1(c).

(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 any other central bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “SPC”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. 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 the 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 (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 hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures determined by such Affiliated Lender in its sole discretion or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:
(i) Affiliated Lenders will not (A) receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II or (B) make any challenge to the Administrative Agent’s or any other Lender’s attorney-client privilege on the basis of its status as a Lender;

(ii) [reserved];

(iii) each Lender (other than any other Affiliated Lender) that assigns any Loans to an Affiliated Lender pursuant to clause (y) above shall deliver to the Administrative Agent and the Borrower a customary Big Boy Letter;

(iv) the aggregate principal amount of Loans of any Class under this Agreement held by Affiliated Lenders at the time of any such purchase or assignment shall not exceed 25% of the aggregate principal amount of Loans of such Class outstanding at such time under this Agreement (such percentage, the “Affiliated Lender Cap”); provided that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Loans of any Class held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void ab initio;

(v) as a condition to each assignment pursuant to this subsection (h), the Administrative Agent and the Borrower shall have been provided a notice in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender (in its capacity as such) shall waive any right to bring any action in connection with such Loans against the Administrative Agent, in its capacity as such; and

(vi) the assigning Lender and the Affiliated Lender purchasing such Lender’s Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit D-2 hereto (an “Affiliated Lender Assignment and Assumption”).

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Loans pursuant to this subsection (h) may, in its sole discretion, contribute, directly or indirectly, the principal amount of such Loans or any portion thereof, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Loans shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register.

Each Affiliated Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. The Administrative Agent may conclusively rely upon any notice delivered pursuant to the immediately preceding sentence or pursuant to clause (v) of this subsection (h) and shall not have any liability for any losses suffered by any Person as a result of any purported assignment to or from an Affiliated Lender.
(i) Notwithstanding anything in Section 10.01 or the definition of “Required Lenders,” or “Required Facility Lenders” to the contrary, for purposes of determining whether the Required Lenders and Required Facility Lenders (in respect of a Class of Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(j), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action and, except with respect to any amendment, modification, waiver, consent or other action (x) in Section 10.01 requiring the consent of all Lenders, all Lenders directly and adversely affected or specifically such Lender, (y) that alters an Affiliated Lender’s pro rata share of any payments given to all Lenders, or (z) affects the Affiliated Lender (in its capacity as a Lender) in a manner that is disproportionate to the effect on any Lender in the same Class, the Loans held by an Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Lender vote (and shall be deemed to have been voted in the same percentage as all other applicable Lenders voted if necessary to give legal effect to this paragraph) (but, in any event, in connection with any amendment, modification, waiver, consent or other action, shall be entitled to any consent fee, calculated as if all of such Affiliated Lender’s Loans had voted in favor of any matter for which a consent fee or similar payment is offered).

(j) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that, and each Affiliated Lender Assignment and Assumption shall provide a confirmation that, if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Loans held by such Affiliated Lender in any manner in the Administrative Agent’s sole discretion, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Loans held by it as the Administrative Agent directs; provided that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a disproportionately adverse manner than the proposed treatment of similar Obligations held by Lenders that are not Affiliated Lenders.

(k) Although any Debt Fund Affiliate(s) shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(h), (i) or (j), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) (for the avoidance of doubt, without requiring any representation as to the possession of material non-public information by such Affiliate) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of “Required Lenders” to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Loans of Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.
(l) Any Lender may, so long as no Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to Holdings, the Borrower or any Subsidiary of the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) or (y) open market purchases on a non-pro rata basis; provided that:

(i) (x) if the assignee is Holdings or a Subsidiary of the Borrower, upon such assignment, transfer or contribution, the applicable assignee shall automatically be deemed to have contributed or transferred the principal amount of such Loans, plus all accrued and unpaid interest thereon, to the Borrower; or (y) if the assignee is the Borrower (including through contribution or transfers set forth in clause (x)), (a) the principal amount of such Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register;

(ii) [reserved]; and

(iii) each Lender (other than an Affiliated Lender) that assigns any Loans to Holdings, the Borrower or any Subsidiary of the Borrower pursuant to clause (y) above shall deliver to the Administrative Agent and the Borrower a customary Big Boy Letter.

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (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.

(n) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

SECTION 10.08 [Reserved].

SECTION 10.09 Confidentiality. Each of the Agents, the Arrangers and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees,
advisors and representatives (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, with such Affiliate being responsible for such Person’s compliance with this Section 10.09; provided, however, that such Agent, Arranger or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); provided, however, that each Agent, each Arranger and each Lender agrees to notify the Borrower promptly thereof (except in connection with any request as part of a regulatory examination) to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; provided that such Agent, such Arranger or such Lender, as applicable, agrees that it will (x) notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of a regulatory examination) unless such notice is prohibited by law, rule or regulation and (y) seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) subject to Section 10.07(1)(b)(v)(D), any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be an Additional Lender or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; provided that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require “click through” or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a “due diligence” defense, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arranger, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, “Information” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that no information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed nonconfidential on account of such information not being clearly identified at the time of delivery as being confidential. Any Person required to maintain the
confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent, each Arranger and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents, the Arrangers and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

SECTION 10.10 Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document. The rights of each Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.12 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.
SECTION 10.13 Electronic Execution of Assignments and Certain Other Documents. The words “delivery,” “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.14 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.16 GOVERNING LAW.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY
SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

SECTION 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

SECTION 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative 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 the Borrower, each Agent, each Lender, each other party hereto and their respective successors and assigns.

SECTION 10.19 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 under any of the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of setoff, rights on account of any banker’s lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 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 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by Administrative Agent or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party’s name, product photographs, logo or trademark; provided that any such material shall be provided to the Borrower for its review a reasonable period of time in advance of publication. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and the Arrangers.
SECTION 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

SECTION 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm’s-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, Arranger and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates, or any other Person with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens. (a) The Lenders hereby irrevocably agree that the Liens granted to the Administrative Agent or the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder (including any Receivables Financing Transaction)) to any Person other than another Loan Party, to the extent such
sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents and (vii) to the extent such Collateral otherwise becomes Excluded Assets. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary, or otherwise becoming an Excluded Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, consents, acknowledgements, and agreements necessary or desirable to evidence or confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when the Termination Conditions are satisfied, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements and (iii) contingent obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Liens permitted by the Loan Documents, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any Lien permitted under Section 7.01 to be senior to the Liens in favor of the Collateral Agent.

SECTION 10.25 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

MCAFEE, LLC, as the Borrower

By: /s/ Michael Berry
   Name: Michael Berry
   Title: Chief Financial Officer

MCAFEE FINANCE 2, LLC, as Holdings

By: /s/ Michael Berry
   Name: Michael Berry
   Title: Vice President

[Signature Page to Second Lien Credit Agreement]
JPMORGAN CHASE BANK N.A., as Administrative Agent, Collateral Agent and Lender

By: /s/ Bruce S. Borden

Name: Bruce S. Borden
Title: Executive Director

[Signature Page to Second Lien Credit Agreement]
AMENDMENT NO. 1 TO SECOND LIEN CREDIT AGREEMENT

This AMENDMENT NO. 1 TO SECOND LIEN CREDIT AGREEMENT, dated as of November 1, 2018 (this “Amendment”), is entered into by and among McAfee, LLC, a Delaware limited liability company (the “Borrower”), the Guarantors party hereto, the Lenders party hereto and JPMorgan Chase Bank, N.A., as administrative agent (the “Administrative Agent”). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

PRELIMINARY STATEMENTS:

WHEREAS, the Borrower, McAfee Finance 2, LLC, a Delaware limited liability company, the Administrative Agent and the lenders from time to time party thereto are party to that certain Second Lien Credit Agreement, dated as of September 29, 2017 (as amended, supplemented or otherwise modified prior to the date hereof, the “Credit Agreement”; capitalized terms not otherwise defined in this Amendment have the same meanings as specified in the Credit Agreement);

WHEREAS, Section 10.01 of the Credit Agreement provides that the relevant Loan Parties and the Required Lenders may amend the Credit Agreement and the other Loan Documents for certain purposes; and

WHEREAS, (i) each Lender party hereto (which collectively constitute the Required Lenders) has agreed, on the terms and conditions set forth herein, to consent to the amendments to the Credit Agreement as provided in Section 1 below;

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Amendments. The Credit Agreement is, effective as of the Amendment No. 1 Effective Date, hereby amended as follows:

(a) The definition of “Transaction Document” in Section 1.01 is hereby amended and restated in its entirety as follows:

“Transaction Document” means each of (a) that certain Transition Services Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation (as amended by the First Amendment to the Transition Services Agreement, dated as of August 31, 2017) (the “TSA”), (b) that certain letter agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (c) that certain Intellectual Property Matters Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation, (d) that certain Security Innovation Alliance Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (e) that certain Software License Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (f) that certain
Commercial Services Agreement, dated as of April 3, 2017, between Foundation Technology Worldwide LLC and Intel Corporation,

(g) that certain Embedded Software Distribution and Services Agreement, dated as of October 1, 2012, among the Borrower, McAfee Ireland Limited (successor in interest to McAfee Security S.a.r.l.), McAfee Co. Ltd., and Intel Corporation (as amended by the First amendment thereto dated May 12, 2013, the Second Amendment thereto dated June 24, 2013, the Third Amendment thereto dated June 24, 2013, the Fourth Amendment thereto dated June 24, 2013, the Fifth Amendment thereto dated January 28, 2016, the Sixth Amendment thereto dated March 15, 2016, and the Seventh Amendment thereto dated April 3, 2017, (h) that certain Master Purchase Agreement, dated as of April 3, 2017, between the Borrower and Intel Corporation, (i) that certain Intellectual Property Assignment, dated as of April 3, 2017 between Foundation Technology Worldwide LLC and Intel Corporation, (j) that certain Corporate Non-Disclosure Agreement for Restricted Secret Information, dated as of April 3, 2017 between Foundation Technology Worldwide LLC and its Affiliates on the one hand and Intel Corporation and its Affiliates on the other hand, (k) that certain Non-Disclosure Agreement for Restricted Secret Information, dated as of April 3, 2017 between Borrower and Intel Corporation, (l) that certain Subscription Agreement, dated as of September 6, 2016, by and among Foundation Technology Worldwide LLC, TPG VII Manta Holdings, L.P. and Intel Corporation, as amended by that certain First Amendment to Subscription Agreement, dated as of April 2, 2017, and that certain Second Amendment to Subscription Agreement, dated as of May 8, 2017, and (m) that certain Side Letter to the Subscription Agreement, dated as of April 2, 2017 among Foundation Technology Worldwide LLC, Manta Holdings, L.P. and Intel Corporation.

(b) Section 6.01(1) is hereby amended and restated in its entirety as follows:

“(1) within ninety (90) days after the end of each fiscal year of the Borrower (or, solely for the fiscal years ending on or about December 30, 2017 and December 29, 2018, one hundred and fifty (150) days commencing with the fiscal year ending on or about December 30, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations and cash flows for such fiscal year (in the case of such financial statements for the fiscal year ending on or about December 30, 2017, for the period from April 3, 2017 to the last day of such fiscal year), together with related notes thereto, setting forth in each case (commencing with the fiscal year ending on or about December 29, 2018) in comparative form the figures for the previous fiscal year (provided that financial statements or financial data for the fiscal year ending on or about December 30, 2017, for comparative purposes relative to the fiscal year ending on or about December 29, 2018, may be presented on a combined or other pro forma basis prepared in good faith by the Borrower), in reasonable detail and all prepared in accordance with GAAP, audited and
accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a “going concern” explanatory paragraph or like qualification that is due to (i) the impending maturity of any Indebtedness, (ii) any anticipated inability to satisfy the Financial Covenant (as defined in the First Lien Credit Agreement) or any other financial covenant or (iii) an actual Default of the Financial Covenant (as defined in the First Lien Credit Agreement) or any default with respect to any other financial covenant);

(c) Section 6.01(2) is hereby amended and restated in its entirety as follows:

“(2) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (or, solely for the fiscal quarters ending on or about September 30, 2017 and March 31, 2019, seventy-five (75) days after the end of such fiscal quarter and solely for the fiscal quarters ending on or about March 31, 2018, June 30, 2018 and September 29, 2018, sixty (60) days after the end of such fiscal quarter) commencing with the fiscal quarter ended on or about September 30, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) consolidated statement of operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth commencing with the fiscal quarter ending on or about September 29, 2018, (x) in the case of the preceding clause (a), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year and (y) in the case of the preceding clause (b), in comparative form the figures for the corresponding portion of the previous fiscal year (provided that for any fiscal quarter ending in fiscal year 2018, comparative figures of prior fiscal periods shall be limited to the corresponding fiscal quarter of fiscal year 2017 (and not for the portion of the fiscal year then ended)), accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with related notes thereto;”

Section 2. Representations and Warranties, No Default. The Borrower hereby represents and warrants that as of the Amendment No. 1 Effective Date, after giving effect to the amendments set forth in this Amendment, (i) no Default or Event of Default exists and is continuing and (ii) all representations and warranties of the Loan Parties contained in the Credit Agreement as amended hereby and the other Loan Documents are true and correct in all material respects; 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.
SECTION 3. Effectiveness. Section 1 of this Amendment shall become effective on the date (such date, if any, the “Amendment No. 1 Effective Date”) that the Administrative Agent shall have received executed signature pages hereto from the Lenders constituting the Required Lenders and each Loan Party.

SECTION 4. Costs and Expenses. The Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent in connection with the preparation, execution and delivery of this Amendment and any other instruments and documents to be delivered hereunder or in connection herewith, including all Attorney Costs of a single U.S. counsel to the Administrative Agent.

SECTION 5. Execution in Counterparts; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging (including in.pdf format) means shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 6. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Clauses (b) and (c) of Section 10.16 of the Credit Agreement are incorporated herein by reference, mutatis mutandis.

SECTION 7. Headings. The headings of this Amendment are included for convenience of reference only and shall not affect the interpretation of this Amendment.

SECTION 8. Effect of Amendment. Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent or any other Agent, in each case under the Credit Agreement or any other Loan Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document. Each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement as amended hereby, or any other Loan Document as amended hereby, is hereby ratified and re-affirmed in all respects and shall continue in full force and effect. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement and from and after the Amendment No. 1 Effective Date, all references to the Credit Agreement in any Loan Document and all references in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, shall, unless expressly provided otherwise, refer to the Credit Agreement as amended by this Amendment. Each of the Loan Parties hereby consents to this Amendment and confirms that all obligations of such Loan Party under the Loan Documents
to which such Loan Party is a party shall continue to apply to the Credit Agreement as amended hereby. The parties hereto acknowledge and agree that
the amendment of the Credit Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in
connection herewith shall not constitute a novation of the Credit Agreement and the other Loan Documents as in effect prior to the Amendment No. 1
Effective Date.

SECTION 9. Reaffirmation. Each of the Loan Parties hereby consents to the amendment of the Credit Agreement described in Section 1
of this Amendment and hereby confirms its respective guarantees, pledges, grants of security interests, subordinations and other obligations, as
applicable, under and subject to the terms of each of the Loan Documents to which it is party, and confirms, agrees and acknowledges that,
notwithstanding the consummation of this Amendment, such guarantees, pledges, grants of security interests, subordinations and other obligations, and
the terms of each of the Loan Documents to which it is a party, except as expressly modified by this Amendment, are not affected or impaired in any
manner whatsoever and shall continue to be in full force and effect and shall also guarantee and secure all obligations as amended and reaffirmed
pursuant to the Credit Agreement and this Amendment.

SECTION 10. WAIVER OF RIGHT OF TRIAL BY JURY. EACH PARTY TO THIS AMENDMENT HEREBY IRREVOCABLY
WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY
LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS
CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO
(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR
OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING
WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS
AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

MCAFEE, LLC

By: /s/ Michael Berry
    Name: Michael Berry
    Title: Chief Financial Officer

GUARANTORS:

MCAFEE FINANCE 2, LLC
MCAFEE EMPLOYEE HOLDINGS, LLC
MCAFEE EXECUTIVE HOLDINGS, INC.
MCAFEE PUBLIC SECTOR LLC
MCAFEE ACQUISITION CORP.
SKYHIGH NETWORKS ACQUISITION CORP.
SKYHIGH NETWORKS HOLDINGS CORP.
SKYHIGH NETWORKS, LLC
MCAFEE CONSUMER AFFAIRS NORTH, LLC
TUNNELBEAR, LLC

By: /s/ Michael Berry
    Name: Michael Berry
    Title: Vice President

[Signature Page to Amendment No. 1 to Second Lien Credit Agreement]
JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By:  /s/ Matthew Cheung
     Name: Matthew Cheung
     Title: Vice President

[Signature Page to Amendment No. 1 to Second Lien Credit Agreement]
[Lender signature pages intentionally omitted]

[Signature Page to Amendment No. 1 to Second Lien Credit Agreement]
This AMENDMENT NO. 2 TO SECOND LIEN CREDIT AGREEMENT, dated as of June 13, 2019 (this “Amendment”), is entered into by and among McAfee, LLC, a Delaware limited liability company (the “Borrower”), the Guarantors party hereto, the Lenders party hereto and JPMorgan Chase Bank, N.A., as administrative agent (the “Administrative Agent”). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

PRELIMINARY STATEMENTS:

WHEREAS, the Borrower, McAfee Finance 2, LLC, a Delaware limited liability company, the Administrative Agent and the lenders from time to time party thereto are party to that certain Second Lien Credit Agreement, dated as of September 29, 2017 (as amended, supplemented or otherwise modified prior to the date hereof, the “Credit Agreement”; capitalized terms not otherwise defined in this Amendment have the same meanings as specified in the Credit Agreement);

WHEREAS, Section 10.01 of the Credit Agreement provides that the relevant Loan Parties and the Required Lenders may amend the Credit Agreement and the other Loan Documents for certain purposes; and

WHEREAS, (i) each Lender party hereto (which collectively constitute the Required Lenders) has agreed, on the terms and conditions set forth herein, to consent to the amendments to the Credit Agreement as provided in Section 1 below;

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Amendment. The Credit Agreement is, effective as of the Amendment No. 2 Effective Date, hereby amended as follows:

(a) The following definitions are added to Section 1.01, in alphabetical order as follows:

"'2019 Dividend' means a Restricted Payment made on the Second Amendment Effective Date in an amount not to exceed $680,836,027.09.

'BHC Act Affiliate' of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

'Covered Entity' means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).
‘Default Right’ has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

‘Non-Financing Lease Obligation’ means a lease obligation that is not required to be accounted for as a financing or capital lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP. For the avoidance of doubt, a straight-line or operating lease (including any lease that would not have been a capital lease under GAAP as of December 31, 2017) shall be considered a Non-Financing Lease Obligation.

‘Second Amendment’ means that certain Amendment No. 2 to Second Lien Credit Agreement, dated as of the Second Amendment Effective Date, among the Borrower, the Lenders party thereto, the Administrative Agent.

‘Second Amendment Effective Date’ means the date on which all of the conditions contained in Section 3 of the Second Amendment have been satisfied or waived, which date, for the avoidance of doubt, is June 13, 2019.

‘QFC’ has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(6)(D).”

(b) The definition of “Capitalized Lease Obligation” in Section 1.01 is hereby amended and restated in its entirety as follows:

“’Capitalized Lease Obligation’ means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital or finance lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP and, for the avoidance of doubt, shall not include any operating lease or other Non-Finance Lease Obligation.”

(c) The definition of “GAAP” in Section 1.01 is hereby amended by deleting the words “(i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with Section 1.03 and (ii)” contained therein.

(d) The definition of “Indebtedness” in Section 1.01 is hereby amended by the following:

(1) Designating the existing clause (3)(vi) “asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);” as the new clause (3)(vii).

(2) Inserting the clause “any Non-Financing Lease Obligation, and” as clause (3)(vi) after clause (3)(v), and

(3) Deleting “and” from clause (3)(v).
(e) Clause (39) of the definition of “Permitted Liens” in Section 1.01 is hereby amended by replacing all references to “4.50 to 1.00” with a reference to “5.00 to 1.00” and by replacing all references to “5.50 to 1.00” with a reference to “6.00 to 1.00”.

(f) Section 1.03 is hereby amended by the following:

(1) deleting the words “and (ii) unless the Borrower has requested an amendment pursuant to the second paragraph of the definition of “GAAP” with respect to the treatment of operating leases and Capitalized Lease Obligations under GAAP (or IFRS) and until such amendment has become effective, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01” contained therein, and

(2) deleting “(i)” immediately prior to the words “all terms of an accounting or financial nature used herein shall be construed”.

(g) Section 2.14(4)(c)(A) is hereby amended by inserting the words “(for the avoidance of doubt, it being agreed that as of the Second Amendment Effective Date, no Incremental Loans or Incremental Commitments have been incurred to this clause (1))” immediately prior to the words “plus (2) the aggregate amount of (w) voluntary prepayments, redemptions or repurchases of Incremental Loans and Permitted Incremental Equivalent Debt” contained therein.

(h) Section 2.14(4)(c)(D)(x) is hereby amended by replacing the words “does not exceed 5.25 to 1.00” with the words “does not exceed 5.75 to 1.00”.

(i) Section 2.14(4)(c)(D)(y) is hereby amended by replacing the words “does not exceed 5.50 to 1.00” with the words “does not exceed 6.00 to 1.00”.

(j) Section 7.02 is hereby amended by the following:

(1) replacing all references to “4.50 to 1.00” with a reference to “5.00 to 1.00”,

(2) replacing all references to “5.50 to 1.00” with a reference to “6.00 to 1.00”,

(3) replacing all references to “5.75 to 1.00” with a reference to “6.25 to 1.00”.

3
(k) Section 7.02(b)(2)(x)(i) is hereby amended by replacing the words “as in effect on the date hereof” in each place that they appear with the words “as in effect on the Second Amendment Effective Date”.

(l) Section 7.05(a) is hereby amended by replacing the words “Closing Date” appearing immediately prior to the words “(excluding Restricted Payments permitted by 7.05(b) other than clause (1) thereof)” contained therein with the words “Second Amendment Effective Date”.

(m) Section 7.05(b)(10) is hereby amended by inserting the words “after the Second Amendment Effective Date” immediately prior to the words “not to exceed not to exceed (as of the date any such Restricted Payment is made) $125.0 million” contained therein.

(n) Section 7.05(b)(14)(c) is hereby amended by inserting the words “limitations under Section 163 of the” immediately prior to the words “Code and the calculation under the applicable state and local tax laws of taxable income and taxable losses and the extent to which such losses may offset such income” contained therein.

(o) Section 7.05(b)(23) is hereby amended by the following:

1. inserting the clause “the 2019 Dividend.” immediately after Section 7.05(b)(23) as the new Section 7.05(b)(24),
2. replacing the period at the end of Section 7.05(b)(23) with “; and”, and
3. removing “and” from the end of Section 7.05(b)(22).

(p) Insert the following words immediately after Section 10.25 as the new Section 10.26.

“Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):
In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender hereunder shall in no event affect the rights of any Covered Party under a Supported QFC or any QFC Credit Support.

SECTION 2. Representations and Warranties, No Default. The Borrower hereby represents and warrants that as of the Amendment No. 2 Effective Date, after giving effect to the amendments set forth in this Amendment, (i) no Default or Event of Default exists and is continuing and (ii) all representations and warranties of the Loan Parties contained in the Credit Agreement as amended hereby and the other Loan Documents are true and correct in all material respects; 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.

SECTION 3. Effectiveness. Section 1 of this Amendment shall become effective on the date (such date, if any, the “Amendment No. 2 Effective Date”) that the Administrative Agent shall have received executed signature pages hereto from the Lenders constituting the Required Lenders and each Loan Party.

SECTION 4. Costs and Expenses. The Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent in connection with the preparation, execution and delivery of this Amendment and any other instruments and documents to be delivered hereunder or in connection herewith, including all Attorney Costs of a single U.S. counsel to the Administrative Agent.
SECTION 5. Execution in Counterparts; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging (including in.pdf format) means shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 6. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Clauses (b) and (c) of Section 10.16 of the Credit Agreement are incorporated herein by reference, mutatis mutandis.

SECTION 7. Headings. The headings of this Amendment are included for convenience of reference only and shall not affect the interpretation of this Amendment.

SECTION 8. Effect of Amendment. Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent or any other Agent, in each case under the Credit Agreement or any other Loan Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document. Each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement as amended hereby, or any other Loan Document as amended hereby, is hereby ratified and re-affirmed in all respects and shall continue in full force and effect. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement and from and after the Amendment No. 2 Effective Date, all references to the Credit Agreement in any Loan Document and all references in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, shall, unless expressly provided otherwise, refer to the Credit Agreement as amended by this Amendment. Each of the Loan Parties hereby consents to this Amendment and confirms that all obligations of such Loan Party under the Loan Documents to which such Loan Party is a party shall continue to apply to the Credit Agreement as amended hereby. The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Credit Agreement and the other Loan Documents as in effect prior to the Amendment No. 2 Effective Date.

SECTION 9. Reaffirmation. Each of the Loan Parties hereby consents to the amendment of the Credit Agreement described in Section 1 of this Amendment and hereby confirms its respective guarantees, pledges, grants of security interests, subordinations and other obligations, as applicable, under and subject to the terms of each of the Loan Documents to which it is party, and confirms, agrees and acknowledges that, notwithstanding the consummation of this Amendment, such guarantees, pledges, grants of security interests, subordinations and other obligations, and the terms of each of the Loan Documents to which it is a party, except as expressly modified by this Amendment, are not affected or impaired in any manner whatsoever and shall continue to be in full force and effect and shall also guarantee and secure all obligations as amended and reaffirmed pursuant to the Credit Agreement and this Amendment.
SECTION 10. WAIVER OF RIGHT OF TRIAL BY JURY. EACH PARTY TO THIS AMENDMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.

[Remainder of page left intentionally blank]
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

MCAFEE, LLC

By: /s/ Michael Berry
   Name: Michael Berry
   Title: Chief Financial Officer

GUARANTORS:

MCAFEE FINANCE 2, LLC
MCAFEE EMPLOYEE HOLDINGS, LLC
MCAFEE EXECUTIVE HOLDINGS, INC.
MCAFEE PUBLIC SECTOR LLC
MCAFEE ACQUISITION CORP.
SKYHIGH NETWORKS ACQUISITION CORP.
SKYHIGH NETWORKS HOLDINGS CORP.
SKYHIGH NETWORKS, LLC
MCAFEE CONSUMER AFFAIRS NORTH, LLC
TUNNELBEAR, LLC

By: /s/ Michael Berry
   Name: Michael Berry
   Title: Vice President

[Signature Page to Amendment No. 2 to Second Lien Credit Agreement]
JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Matthew Cheung
Name: Matthew Cheung
Title: Vice President

[Signature Page to Amendment No. 2 to Second Lien Credit Agreement]
THIS OFFICE LEASE ("Lease") is made as of the 10th day of April, 2019 ("Date of Lease"), by and between US ER AMERICA CENTER 4, LLC, a California limited liability company ("Landlord"), and MCAFEE, LLC, a Delaware limited liability company ("Tenant").

I. BASIC LEASE PROVISIONS AND DEFINITIONS

1.1 Premises. Approximately 84,273 Rentable Square Feet as outlined on Exhibit A-3 attached hereto and made a part hereof (the "Premises") and comprised of (a) the portion of the first (1st) floor known as Suite 110 and containing approximately 6,471 Rentable Square Feet ("First Floor Premises") in the building containing approximately 221,886 Rentable Square Feet and identified as Phase II Building 4 on Exhibit A-1 attached hereto and made a part hereof and located at 6220 America Center Drive, San Jose, California 95002 (referred to in this Lease as either "Building 4" or the "Building") and (b) the entire fifth (5th) floor in the Building ("Fifth Floor Premises") and the entire sixth (6th) floor in the Building ("Sixth Floor Premises") containing, collectively, approximately 77,802 Rentable Square Feet (collectively, the "Fifth & Sixth Floor Premises").

1.2 Amenity Building. The building identified as the Amenity Building on Exhibit A-1 attached hereto and made a part hereof ("Amenity Building") and located at 6250 America Center Drive, San Jose, California 95002, containing approximately 21,273 Rentable Square Feet.

1.3 Project. The development depicted on Exhibit A-1 and known as America Center consisting of the real property and all improvements built thereon, including, without limitation, the Land, the Building, the Other Buildings, the Common Area, and Parking Facilities, containing approximately 427,600 Rentable Square Feet in the Phase I Buildings and 465,045 Rentable Square Feet in the Phase II Buildings. The "Phase I Buildings" means the buildings identified on Exhibit A-1 as Existing Building 1 located at 6001 America Center Drive, San Jose, California 95002 and as Existing Building 2 located at 6201 America Center Drive, San Jose, California 95002. The "Phase II Buildings" means the Building, the Amenity Building and the building identified on Exhibit A-1 as Phase II Building 3 located at 6280 America Center Drive, San Jose, California 95002 ("Building 3"). The "Other Buildings" means the Phase I Buildings, the Amenity Building, Building 3 and any other buildings located on the Land that Landlord may elect to include as part of the Project from time to time. Landlord reserves the right to adjust the Rentable Square Footage of the Project and the Other Buildings by delivering notice to Tenant that one or more Other Buildings have been sold, constructed, modified or removed from the Project or that the Common Areas have been modified; provided, however, that Tenant’s Proportionate Share shall not increase in connection with any such adjustment made during the initial Term.

1.4 Land. The parcels of land on which the Project is located, as more particularly described on Exhibit A-2 attached hereto and made a part hereof, and all rights, easements and appurtenances thereunto belonging or pertaining. As used in this Lease, references to the “Land” on which the Building and the Surface Lot are located mean “Parcel 4” as identified on Exhibit G and references to the “Land” on which the Amenity Center and the Phase II Parking Garage are located mean “Parcel 3” as identified on Exhibit G.
1.5 **Common Area.** All areas from time to time designated by Landlord for the general and nonexclusive common use or benefit of Tenant, other tenants of the Project, Landlord, and the owners of Other Buildings in the Project, including, without limitation, roadways, entrances and exits, loading areas, landscaped areas, open areas, park areas, entertainment areas, picnic areas, sport courts, service drives, walkways, atriums, courtyards, concourses, ramps, halls, stairs, washrooms, lobbies, elevators, common trash areas, vending or mail areas, common pipes, conduits, wires and appurtenant equipment within the Project, maintenance and utility rooms and closets, exterior lighting, exterior utility lines, the Amenity Building, the Parking Facilities and the areas identified on Exhibit G-1, and referred to in this Lease as (a) the “Entertainment Center,” “Gaming Tables,” “Stage” and the “Orchard” located between Building 3 and Building 4 (collectively, the “Phase II Common Area”); and (b) the “Basketball Court,” “Sports Field” and “Orchard” comprising the area identified as the “Sports Park”.

1.6 **Parking Facilities.** All parking areas now or hereafter designated by Landlord for use by tenants of the Project and/or their guests and invitees, including, without limitation, surface parking, parking decks, parking structures (including the Phase II Parking Garage) and parking areas under or within the Project whether reserved, exclusive, non-exclusive or otherwise. The “Phase II Parking Garage” means that four-story parking structure located at 6250 America Center Drive, San Jose, California 95002, as shown on Exhibit A-I and Exhibit G, which will be accessible only by card access as of the Commencement Date and is subject to exclusive designations for the use and benefit of the tenants and occupants of the Phase II Buildings as set forth in Article II. The “Surface Lot” means the surface parking shown on Exhibit G and located on the parcel identified as “Parcel 4” on Exhibit G.

1.7 **Rentable Square Feet (Foot) or Rentable Area.** The Rentable Area within the Premises, the Building, the Other Buildings and the Project are deemed to be the amounts set forth in this Article I, as measured in accordance with a modified Building Owners and Managers Association 2017 for Single Tenant Office Buildings; Standard Methods of Measurement (ANSI/BOMA Z65.1-2017). Landlord and Tenant stipulate and agree that the Rentable Square Footage of the Premises, the Building, the Other Buildings and the Project are correct and shall not be remeasured.

1.8 **Permitted Use.** Tenant may use the Premises subject to and in accordance with the terms, covenants and conditions set forth in this Lease, the Declaration and applicable governmental regulations, restrictions and permitting (without the necessity of obtaining any zoning changes, conditional use permits or other special permits), solely for administrative use, general business office use, labs, research and development, sales and marketing purposes and uses incidental thereto.

1.9 **Commencement Date.** January 1, 2020.

1.10 **Expiration Date.** December 31, 2030.

1.11 **Term.** 132 months, beginning on the Commencement Date and expiring on the “Expiration Date.”
### 1.12 Basic Rent
The amount set forth in the schedule below, subject to adjustment as specified in **Article IV**.

<table>
<thead>
<tr>
<th>Period</th>
<th>Monthly Basic Rent</th>
<th>Period Basic Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/2020 - 12/31/2020*</td>
<td>$316,023.75</td>
<td>$3,792,285.00</td>
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<tr>
<td>01/01/2021 - 12/31/2021</td>
<td>$325,293.78</td>
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<td>$335,406.54</td>
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<td>01/01/2023 - 12/31/2023</td>
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<td>01/01/2026 - 12/31/2026</td>
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<td>01/01/2028 - 12/31/2028</td>
<td>$400,296.75</td>
<td>$4,803,561.00</td>
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<tr>
<td>01/01/2029 - 12/31/2029</td>
<td>$412,094.97</td>
<td>$4,945,139.64</td>
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<tr>
<td>01/01/2030 - 12/31/2030</td>
<td>$424,735.92</td>
<td>$5,096,831.04</td>
</tr>
</tbody>
</table>

The Basic Rent shall be abated for the first 12 months of the Term ("Basic Rent Abatement Period"). All of the remaining terms and conditions of the Lease shall remain in full force and effect during the foregoing Basic Rent Abatement Period. If any Event of Default (as defined in **Section 20.1** of the Lease) occurs under this Lease and Landlord terminates the Lease or Tenant’s right to possession of the Premises, then, in addition to Landlord’s other remedies available at law, in equity or under this Lease, the Basic Rent abatement provided for in this **Section 1.12** shall immediately terminate, and Tenant shall immediately pay Landlord upon demand the unamortized portion of the previously abated Basic Rent.

#### 1.13 Intentionally Deleted

#### 1.14 Lease Year
Each consecutive 12 month period elapsing after: (i) the Commencement Date if the Commencement Date occurs on the first day of a month; or (ii) the first day of the month following the Commencement Date if the Commencement Date does not occur on the first day of a month. Notwithstanding the foregoing, the first Lease Year shall include the additional days, if any, between the Commencement Date and the first day of the month following the Commencement Date, in the event the Commencement Date does not occur on the first day of a month.

#### 1.15 Calendar Year
For the purpose of this Lease, Calendar Year shall be a period of 12 months commencing on each January 1 during the Term, except that the first Calendar Year shall be that period from and including the Commencement Date through December 31 of that same year, and the last Calendar Year shall be that period from and including the last January 1 of the Term through the earlier of the Expiration Date or date of Lease termination.

#### 1.16 Tenant’s Proportionate Share
Tenant’s Proportionate Share of the Building is 37.98%. (determined by dividing the Rentable Square Feet of the Premises by the Rentable Square Feet of the Building and multiplying the resulting quotient by 100 and rounding to the second decimal place).

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1.17 Parking Space Allocation. Tenant shall have the right to 279 unreserved parking spaces within the Parking Facilities of which (a) 252 shall be unreserved parking spaces (of which 144 will be located on the Surface Lot and 108 will be located in the Phase H Parking Garage), (b) 16 shall be reserved parking spaces in the locations shown on Exhibit G (of which 10 will be located in the Surface Lot and 6 shall be located in the Phase 11 Parking Garage), (c) 5 shall have connections for car-chargers in the reserved spaces in the locations shown on Exhibit G (“Car-Charging Stalls”) (of which 2 will be located in the Surface Lot and 3 shall be located in the Phase II Parking Garage), and (d) 7 shall be the reserved spaces in the locations shown on Exhibit G (“Future Car-Charging Stalls”) (of which 2 will be located in the Surface Lot and 5 shall be located in the Phase II Parking Garage) until such time as Tenant makes the Parking Space Alterations (as defined in Section 8.2) to any such spaces, following which any such spaces shall have connections to be car-charging stalls and added to the number of Car-Charging Stalls in Tenant’s Parking Spacing Allocation. For every four spaces that are designated as a Car-Charging Stall there will be two electric car chargers (“EV Stations”) in the locations shown on Exhibit G available for the connections serving each such Car-Charging Stall when in use. Tenant’s Parking Space Allocation shall include Tenant’s Proportionate Share of visitor and handicapped parking.

1.18 Security Deposit. $3,754,362.15, subject to adjustment in accordance with Section 5.3.

1.19 Brokers:

Landlord’s: Cushman & Wakefield
300 Santana Row, Fifth Floor
San Jose, CA 95128

Tenant’s: Cushman & Wakefield
300 Santana Row, Fifth Floor
San Jose, CA 95128

1.20 Guarantors. None.

1.21 Landlord’s: c/o SteelWave, LLC
999 Baker Way, Suite 200
San Mateo, CA 94404
Attention: Steve Dunn

Notice Address: Steve Dunn

Tenant’s: Alex Arsenlis

Attention: Alex Arsenlis
With copies at the same time to.

c/o USAA Real Estate Company
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attention: Teddy Childers
Attention: Steve Waters

1.22 Tenant’s Notice Address.
McAfee, LLC
c/o MBG Consulting
980 N Michigan Ave # 1000
Chicago, IL 60611
And
McAfee, LLC
6220 America Center Drive, Suite 600
San Jose, California 95002
Attention: McAfee Facilities

With copies to:
Gary Bennett, Facilities
McAfee, LLC
5000 Headquarters Dr.
Plano, TX 75024
And
Robert Peralta
McAfee, LLC
5000 Headquarters Dr.
Plano, TX 75024

1.23 Interest Rate: Default Rate.

(i) The per annum interest rate listed as the U.S. “prime” rate as published from time to time under “Money Rates” in the Wall Street Journal plus 5% (“Default Rate”), but in no event greater than the maximum rate permitted by law.

(ii) The per annum interest rate listed as the U.S. “prime” rate as published from time to time under “Money Rates” in the Wall Street Journal plus 2% (“Interest Rate”), but in no event greater than the maximum rate permitted by law.
In the event the Wall Street Journal ceases to publish such rates, Landlord shall choose, at Landlord’s reasonable discretion, a similarly published rate.

1.24 **Agents.** Officers, partners, members, owners, directors, employees, agents, licensees, contractors, customers and invitees; to the extent customers and invitees are under the principal’s control or direction.

1.25 “Declaration,” “Phase II Easement Agreement,” and “Sports Park Easement Agreement”. The “Declaration” means that certain “Declaration and Agreement of Covenants and Restrictions of America Center” recorded in the Official Records of Santa Clara County on December 22, 2008 as Document Number 20074383, as amended from time to time in accordance with the terms thereof, and any Rules that may be promulgated thereunder. The “Phase II Easement Agreement” means that certain “Parking Structure, Common Area and Amenity Building Easement Agreement” recorded in the Official Records of Santa Clara County on August 16, 2018, as Document Number 24004701, as amended from time to time in accordance with the terms thereof, and any Rules that may be promulgated thereunder. The Phase II Parking Garage is referred to as the “Parking Structure” under the Phase II Easement Agreement. The “Sports Park Easement Agreement” means that certain “North Sports Park Easement Agreement” recorded in the Official Records of Santa Clara County on November 28, 2017, as Document Number 23813520, as amended from time to time in accordance with the terms thereof, and any Rules that may be promulgated thereunder. The Sports Park is referred to as the “North Sports Park” under the Sports Park Easement Agreement.

II. **PREMISES**

2.1 **Lease of Premises.** In consideration of the agreements contained herein, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Term and upon the terms and conditions set forth in this Lease. As an appurtenance to the Premises, subject to the terms of the Lease and Landlord’s reservations of rights under Section 2.2 with respect to the Common Area, Tenant shall have (1) the general non-exclusive right together with the other tenants of Building 4 to use the fire pit and lounge for Building 4 shown on Exhibit G-1 attached hereto and incorporated herein and (2) the general and non-exclusive right, (a) together with Landlord, the owner of Building 3 and the other tenants of Building 3 and Building 4, to use the Amenity Building, the Phase II Common Area and the Phase II Parking Garage and (b) together with Landlord, the other owners and the other tenants of the Project, to use the other Common Area; provided, however, except to the extent Landlord’s prior written approval is obtained, Landlord excepts and reserves exclusively to itself the use of (i) roofs (except for any Amenities (as defined in, and subject to the terms of, Section 16.6) on the roof of the Amenity Building); (ii) maintenance and utility equipment rooms and closets, and (iii) conduits, wires and appurtenant equipment within the Project and equipment rooms and closets, and exterior utility lines. Subject to the terms of the Lease, including, without limitation, Landlord’s reservation of rights under Section 2.2, Tenant shall have access 24 hours per day, seven days per week, 365 days per year to the Premises, Building, the Surface Lot and the Phase II Parking Garage. For purposes of clarity, subject to the terms of the Lease and Landlord’s reservations of rights under Section 2.2 with respect to the Common Area, (A) the fire pit and lounge for Building 4 is for the exclusive use of the tenants of Building 4 and (B) the Amenity Building, the Phase II Common Area and the Phase II Parking Garage are for the exclusive use of Landlord, the owner
of Building 3 and the other tenants of Building 3 and Building 4. Landlord agrees to use commercially reasonable efforts to promptly address any complaints and concerns by Tenant that the exclusivity of the Phase II Common Area is not being adhered to by the occupants of the Phase I Buildings.

2.2 Landlord’s Reservations. Provided Tenant’s use of and access to the Premises is not materially adversely affected, Landlord reserves the right from time to time to: (i) install, use, maintain, repair, replace and relocate pipes, ducts, conduits, wires and appurtenant meters and equipment above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building; (ii) make changes to the design and layout of the Project, including, without limitation, changes to buildings, driveways, entrances, loading and unloading areas, direction of traffic, landscaped areas and walkways, parking spaces and parking areas; (iii) use or close temporarily the Common Areas, and/or other portions of the Project while engaged in making improvements, repairs or alterations to the Building, the Project or any portion thereof; and (iv) Landlord reserves for itself, Landlord’s operators of the Amenities, Landlord’s property manager, and their respective Agents, the right from time to time to use, access and periodically reserve portions of the Amenity Building, the Phase II Common Area, the Parking Facilities, the Sports Park and the other Common Area; provided that Landlord shall exercise commercially reasonable efforts to coordinate with Tenant in connection with the exercise of such right in order that there shall be no material adverse effect to Tenant’s use of and access to such Common Areas (including, without limitation, the Common Area Amenities (as defined in Exhibit C)). In addition, Landlord expressly reserves the right to change the name of the Building, the Other Buildings or the Project, provided any name change to the Building shall not include the name of any Competitor (as defined in Article XXVII). Tenant acknowledges and agrees that Tenant shall have no right to use or access the exclusive fire pit and lounge for Building 3 as shown on Exhibit G-1 or any of the Parking Facilities other than the Surface Lot and the Phase II Parking Garage. To the extent Landlord reasonably determines practicable, Landlord shall use commercially reasonable efforts when exercising its rights to construct additional buildings at the Project under this Section 2.2 in order to minimize any material disruption or interference with Tenant’s use of the Premises (or any material portion thereof) for Tenant’s business purposes. Notwithstanding anything to the contrary in this Lease, to the extent that Landlord has obligations under this Lease with respect to portions of the Common Area that are located on portions of the Project that are not owned by Landlord, unless otherwise provided in the Phase II Easement Agreement, Landlord’s obligation shall be to exercise commercially reasonable efforts to cause the owners of such portions of the Project to perform their respective material obligations, to the extent of Landlord’s rights under the Phase II Easement Agreement, the Sports Park Easement Agreement or any other applicable recorded easement agreements, covenants, conditions and restrictions and to enforce or exercise any remedies under the foregoing documents against the applicable owner or other responsible party who fails to perform its material obligations pursuant to such documents.

III. TERM

3.1 Commencement Date. Subject to the earlier termination or extension as otherwise provided in this Lease, the Term shall commence on the Commencement Date and expire at midnight on the Expiration Date. Promptly following the request of either party, Landlord and Tenant shall enter into an agreement confirming the Commencement Date and the Expiration Date, and certain other information, in the form of the Confirmation of Commencement Date attached hereto as Exhibit E.
3.2 Early Possession. Notwithstanding anything to the contrary, upon the later of the Date of Lease, Tenant’s delivery of satisfactory evidence of insurance in accordance with Article XV, the first month’s payment of Basic Rent and Additional Rent (as defined in Section 4.2), and payment of any Security Deposit and continuing until the Commencement Date (the “Early Access Period”), Tenant shall have non-exclusive reasonable rights of entry to the Premises for the purpose of performing the Tenant Work (as defined in Exhibit B-1) and installing furniture, fixtures, equipment and Cabling (as defined in Section 12.3) (the “Early Access Activities”). Tenant’s entry to the Premises and conducting of any Early Access Activities during the Early Access Period shall be subject to the terms and conditions of this Lease, including, without limitation, the indemnification and hold harmless agreements set forth in Article XVII; provided, however, except for the cost of services requested by Tenant, Tenant shall not be required to pay Rent (as defined in Section 4.2) for any days during the Early Access Period on which Tenant is in possession of the Premises for the sole purpose of the Early Access Activities; provided, however, if Tenant uses or accepts all or any portion of the Premises during the Early Access Period for the purpose of conducting business operations or any purposes other than the Early Access Activities, then Tenant shall pay as Additional Rent in accordance with Section 4.3 Operating Expense Rental and Real Estate Tax Rental (as such terms are defined in Section 4.3), commencing on the date of such use. Tenant will coordinate all Early Access Activities with Landlord so as not to interfere with Landlord or with other occupants of the Building.

IV. RENT

4.1 Basic Rent. Tenant shall pay to Landlord the Basic Rent as specified in Section 1.12. Basic Rent shall be payable in monthly installments as specified in Section 1.12, in advance, without demand, notice, deduction, offset or counterclaim, on or before the first day of each and every calendar month during the Term; provided, however, the installment of Basic Rent and Additional Rent in the amount of $454,124.30 payable for the first full calendar month of the Term in which Basic Rent and Additional Rent are due shall be due and payable at the time of execution and delivery of this Lease. Any payment made by Tenant to Landlord on account of Basic Rent may be credited by Landlord to the payment of any late charges then due and payable and to any Basic Rent or Additional Rent (as defined in Section 4.2) then past due before being credited to Basic Rent currently due. Tenant shall pay Basic Rent and all Additional Rent electronically via automatic debit, ACH credit or wire transfer to such account as Landlord designates in writing to Tenant. Landlord may, in its sole discretion, designate an address for payment in lawful U.S. Dollars. If the Term commences on a day other than the first day of a calendar month or terminates on a day other than the last day of a calendar month, the monthly Basic Rent and Additional Rent shall be prorated based upon the number of days in such calendar month. Tenant’s covenant to pay Rent and the obligation of Tenant to perform Tenant’s other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Lease and not otherwise.

4.2 Additional Rent; Rent. All sums payable by Tenant under this Lease, other than Basic Rent, shall be deemed “Additional Rent” and, unless otherwise set forth herein, shall be
payable in the same manner as set forth above for Basic Rent. Basic Rent and Additional Rent shall jointly be referred to as “Rent” within the meaning of California Civil Code Section 1951(a), the nonpayment of which beyond any applicable cure periods set forth in Article XX shall entitle Landlord to exercise all rights and remedies provided in Article XX or by law. It is intended that the Rent provided for in this Lease shall be an absolutely net return to Landlord for the Term of this Lease and any renewals or extensions thereof, free of any and all expenses or charges with respect to the Premises except for those obligations of Landlord expressly set forth herein.

4.3 **Operating Expense Rental and Real Estate Tax Rental.** Tenant shall pay to Landlord throughout the remainder of the Term, as Additional Rent, (1) the Amenity Building Rent (as defined in this Section 4.3), the Management Fee (as defined in this Section 4.3), and Tenant’s Proportionate Share of Operating Expenses (as defined in Section 6.1) during each Calendar Year (collectively, the “Operating Expense Rental”); and (2) Tenant’s Proportionate Share of Real Estate Taxes (as defined in Article VII) during each Calendar Year (“Real Estate Tax Rental”). The “Amenity Building Rent” shall be in the amount set forth in schedule in Section 4.5 and included in the Operating Expense Rental. The “Management Fee” shall be equal to three percent (3%) of the total of Basic Rent, Operating Expense Rental (exclusive of the Management Fee component) and Real Estate Tax Rental owed by Tenant for each Calendar Year and will be included in the Operating Expense Rental; provided, however, during the Basic Rent Abatement Period, the amount of $3,792,285.00 shall be used for purposes of calculating the portion of the Management Fee that is based on annual Basic Rent for the Calendar Year of 2020, even though Basic Rent is subject to abatement during the Basic Rent Abatement Period as provided in Section 1.12. In the event the Expiration Date is other than the last day of a Calendar Year, Operating Expense Rental and Real Estate Tax Rental for the applicable Calendar Year shall be appropriately prorated. Landlord shall submit to Tenant at the beginning of each Calendar Year, or as soon thereafter as reasonably possible, a statement of Landlord’s estimate of Operating Expense Rental and Real Estate Tax Rental due from Tenant during such Calendar Year. In addition to Basic Rent, Tenant shall pay to Landlord on or before the first day of each month during such Calendar Year an amount equal to 1/12th of Landlord’s estimated Operating Expense Rental and estimated Real Estate Tax Rental as set forth in Landlord’s statement. If Landlord fails to give Tenant notice of its estimated payments due for any Calendar Year, then Tenant shall continue making monthly estimated Operating Expense Rental and Real Estate Tax Rental payments in accordance with the estimate for the previous Calendar Year until a new estimate is provided. If Landlord determines that, because of unexpected increases in Operating Expenses or Real Estate Taxes, Landlord’s estimate of the Operating Expense Rental or Real Estate Tax Rental was too low, then Landlord shall have the right to give a new statement of the estimated Operating Expense Rental and estimated Real Estate Tax Rental due from Tenant for the balance of such Calendar Year and bill Tenant for any deficiency. Tenant shall thereafter pay monthly estimated payments based on such new statement.

Within 90 days after the expiration of each Calendar Year, or as soon thereafter as is practicable, Landlord shall submit a statement to Tenant showing the actual Operating Expenses Rental and the actual Real Estate Tax Rental due from Tenant for such Calendar Year. If for any Calendar Year, Tenant’s estimated Operating Expense Rental payments exceed the actual Operating Expense Rental due from Tenant, then Landlord shall give Tenant a credit in the amount of the overpayment toward Tenant’s next monthly payment of estimated Operating Expense Rental, or, in the event this Lease has expired or terminated and no Event of Default (as defined
in Section 20.1) exists, Landlord shall pay Tenant the total amount of such excess within 30 days after delivery of the reconciliation to Tenant. If for any Calendar Year, Tenant’s estimated Operating Expense Rental payments are less than the actual Operating Expense Rental due from Tenant, then Tenant shall pay the total amount of such deficiency to Landlord within 30 days after receipt of the reconciliation from Landlord. If for any Calendar Year, Tenant’s estimated Real Estate Tax Rental payments exceed the actual Real Estate Tax Rental due from Tenant, then Landlord shall give Tenant a credit in the amount of the overpayment toward Tenant’s next monthly payment of estimated Real Estate Tax Rental, or, in the event this Lease has expired or terminated and no Event of Default exists, Landlord shall pay Tenant the total amount of such excess within 30 days after delivery of the reconciliation to Tenant. If for any Calendar Year, Tenant’s estimated Real Estate Tax Rental payments are less than the actual Real Estate Tax Rental due from Tenant, then Tenant shall pay the total amount of such deficiency to Landlord within 30 days after receipt of the reconciliation from Landlord. Landlord’s and Tenant’s obligations with respect to any overpayment or underpayment of Operating Expense Rental and Real Estate Tax Rental shall survive the expiration or termination of this Lease.

4.4 Sales or Excise Taxes. Tenant shall pay to Landlord, as Additional Rent, concurrently with payment of Basic Rent all taxes, including, but not limited to any and all sales, rent or excise taxes (but specifically excluding income taxes calculated upon the net income of Landlord) on Basic Rent, Additional Rent or other amounts otherwise benefiting Landlord, as levied or assessed by any governmental or political body or subdivision thereof against Landlord on account of such Basic Rent, Additional Rent or other amounts otherwise benefiting Landlord, or any portion thereof.

4.5 Amenity Building Rent Schedule. The amount of Amenity Building Rent is set forth in the schedule below.

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<tr>
<th>Period</th>
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<th>Period Amenity Building Rent</th>
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V. SECURITY DEPOSIT

5.1 General. Simultaneously with the execution of this Lease, Tenant shall deposit the Security Deposit with Landlord to be held by Landlord until disbursement in accordance with the terms of this Lease. The Security Deposit shall not bear interest to Tenant and shall be security for Tenant’s obligations under this Lease. Landlord shall be entitled to commingle the Security Deposit with Landlord’s other funds. The Security Deposit is not an advance payment of Rent or a measure of Tenant’s liability for damages. Within 60 days after the Expiration Date or earlier termination of this Lease, or such lesser period as may be required by law, provided that Tenant has notified Landlord of the address to which the Security Deposit should be returned, Landlord shall (provided an Event of Default does not then exist) return the Security Deposit to Tenant, less such portion thereof as Landlord shall have applied in accordance with this Article V. If Tenant defaults with respect to any provisions of this Lease, including without limitation any provisions relating to the payment of Rent, then Landlord may use, apply, or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any other amount that Landlord may spend or become obligated to spend by reason of Tenant’s default or to compensate Landlord for any loss or damage that Landlord may suffer by reason of Tenant’s default. If Landlord so applies the Security Deposit or any portion thereof before the Expiration Date or earlier termination of this Lease, Tenant shall deposit with Landlord, upon demand, the amount necessary to restore the Security Deposit to its original amount. If Landlord shall sell or transfer its interest in the Building, Landlord shall have the right to transfer the Security Deposit to such purchaser or transferee, in which event Tenant shall look solely to the new landlord for the return of the Security Deposit, and Landlord thereupon shall be released from all liability to Tenant for the return of the Security Deposit. To the fullest extent permitted by law, Tenant hereby waives the provisions of Section 1950.7 of the California Civil code, and all other provisions of any law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or its agents, contractors, employers or invitees.

5.2 Letter of Credit. Tenant shall satisfy Tenant’s obligations under Section 5.1 by posting with Landlord a Letter of Credit meeting the requirements of this Section 5.2 (the “Letter of Credit”). The Letter of Credit shall be (i) irrevocable; (ii) issued by Morgan Stanley Bank, N.A., JP Morgan Chase Bank, N.A., Citibank, N.A. or Bank of America, N.A. or a financial institution approved by Landlord in Landlord’s sole discretion (provided that Landlord shall not unreasonably withhold such approval if the financial institution is a U.S. national bank of a similar size and reputation as the financial institutions specifically named in this clause (ii)); (iii) in a form permitting partial and multiple drawings; (iv) for multiple terms of one (1) year each in duration, renewed at least sixty (60) days prior to the expiration thereof, the entire term extending until the date which is ninety (90) days after the expiration of the Term, as such Term may be extended pursuant to the provisions of the Lease; and (v) be in the form attached hereto as Exhibit M or otherwise in form and substance acceptable to the Landlord, in its reasonable discretion. If a partial drawing occurs under the Letter of Credit, Tenant shall, upon demand but not more than five (5) days after such partial drawing, cause the financial institution to reissue the Letter of Credit in the amount then currently required under the terms of the Lease. In addition, within five (5) days after
the bank that issued the Letter of Credit then held by Landlord enters into any form of regulatory or governmental receivership or other similar regulatory or governmental proceeding, including any receivership instituted or commenced by the Federal Deposit Insurance Corporation ("FDIC"), or is otherwise declared insolvent or downgraded by the FDIC, Tenant shall deliver to Landlord a replacement Letter of Credit in the same form and in the amount then currently required under the terms of the Lease and from a financial institution approved by Landlord in its sole and absolute discretion, except as provided in clause (ii) of this Section 5.2 above. Notwithstanding the foregoing, Landlord shall be entitled to draw down the entire amount of the Letter of Credit, without any notice, at any time on or after the earlier of (i) the occurrence of an Event of Default by Tenant under the Lease; or (ii) the thirtieth (30th) day preceding the expiration date of the Letter of Credit in the event Tenant is required to and fails to replace the Letter of Credit. If Landlord draws on the Letter of Credit (or Tenant replaces the Letter of Credit with a Security Deposit in the form of cash with Landlord’s approval), then such cash shall be held by Landlord as a Security Deposit until disbursement or application in accordance with the terms of the Lease.

5.3 Decline of Security Deposit/Letter of Credit. Provided no Event of Default exists under this Lease or would exist but for the pendency of any cure periods provided for in Section 20.1 herein, the Security Deposit, or Letter of Credit posted in lieu thereof, shall be reduced on the following dates (each a “Reduction Date”) as follows: (a) on January 1, 2022, to $2,502,908.10; (b) on January 1, 2023, to $1,668,605.40; (c) on January 1, 2024, to $1,251,454.05 and (d) on January 1, 2025, to $834,302.70. Notwithstanding the foregoing, if (i) a material adverse change in Tenant’s financial condition has occurred; or (ii) an uncured Event of Default exists on the applicable Reduction Date, or would exist but for the pendency of any cure periods provided in Section 20.1 herein, Tenant shall waive any right to a reduced Security Deposit or Letter of Credit, as applicable, and shall deposit any additional sums necessary to increase the Security Deposit, or provide a replacement Letter of Credit increased, to the full amount of $3,754,362.15.

VI. OPERATING EXPENSES

6.1 Operating Expenses Defined. As used herein, the term “Operating Expenses” shall mean all expenses, costs and disbursements of every kind and nature, except as specifically excluded otherwise herein, which Landlord incurs because of or in connection with the ownership, maintenance, management and operation of the Project, and, if the Building, Phase II Buildings, or Project is less than 95% occupied, all additional costs and expenses of ownership, operation, management and maintenance of the Building or Project, as applicable, which Landlord determines that it would have paid or incurred during any Calendar Year if the Building, Phase II Buildings or Project, as applicable had been 95% occupied. With respect to Operating Expenses shared among the Building and one or more Other Buildings or relating to amenities or services provided only to, or used on a disproportionate basis by, Tenant or other specific tenants, Landlord shall allocate on an equitable basis such Operating Expenses to the Building and Other Buildings or among specific tenants of the Project, as determined in Landlord’s reasonable discretion; provided that, (a) in accordance with the Phase II Easement Agreement, fifty percent (50%) of the Operating Expenses of the Amenity Building and the Phase II Common Area shall be allocated to the Building, (b) in accordance with the Sports Park Easement Agreement, twenty five percent (25%) of the Operating Expenses of the Sports Park shall be allocated to the Building and (c) in accordance with the Phase II Easement Agreement, forty percent (40%) of the Operating Expenses of the Phase II Parking Garage shall be allocated to the Building.
Operating Expenses may include, without limitation, all costs, expenses and disbursements incurred or made in connection with the following:

(i) Wages and salaries of all employees, whether employed by Landlord or the Project’s management company, to the extent engaged in the operation and maintenance of the Project, and all costs related to or associated with such employees or the carrying out of their duties, including uniforms and their cleaning, taxes, auto allowances, training and insurance and benefits (including, without limitation, contributions to pension and/or profit sharing plans and vacation or other paid absences);

(ii) The costs of equipping and maintaining a management office, including, but not limited to, rent, accounting and legal fees, supplies and other administrative costs;

(iii) All supplies, tools, equipment and materials, including Common Area janitorial and lighting supplies, used directly in the operation and maintenance of the Project, including any lease payments therefor;

(iv) All utilities, including, without limitation, electricity, water, sewer and gas, for the Building and Common Area, except for charges for submetered electricity and gas and other Project utilities reasonably allocated to Tenant based on such submetered usage, for which Tenant pays Landlord in accordance with Section 16.4;

(v) All maintenance, operation and service agreements for the Phase II Buildings and the Common Area, and any equipment related thereto, including, without limitation, service and/or maintenance agreements for the Parking Facilities, the Shuttle Service (as defined in Section 16.6), energy management, HVAC, plumbing and electrical systems, exterior window repair, replacement and maintenance, and window cleaning, elevator maintenance, janitorial service for the Common Area, groundskeeping, interior and exterior landscaping and plant maintenance, and maintenance of existing utility connections located outside the Building and connected to the exterior of the Building;

(vi) Premiums and deductibles paid for insurance relating to the Project including, without limitation, fire and extended coverage, boiler, earthquake, windstorm, rental loss, and commercial general liability insurance;

(vii) All repairs to the Project, including interior, exterior, structural or nonstructural repairs and replacements, and regardless of whether foreseen or unforeseen; provided, however, any repairs and replacements which under generally accepted accounting principles should be classified as capital improvements shall be subject to inclusion pursuant to the terms of Section 6.1(ix) and otherwise excluded pursuant to Section 6.2(v) below;

(viii) All maintenance of the Project, including, without limitation, repainting Common Areas, replacing Common Area wall coverings, window coverings and carpet, ice and snow removal, window washing, landscaping, groundskeeping, trash removal and the patching, painting, resealing and complete resurfacing of roads, driveways and parking lots;
Any capital improvements made to the Project for the purpose of reducing Operating Expenses or which are required under any governmental law or regulation that was not applicable to the Project as of the Date of Lease, the cost of which shall be amortized on a straight-line basis over the improvement’s useful life, not to exceed the Project’s useful life, together with interest on the unamortized balance of such cost at the Interest Rate, or such higher rate as may have been paid by Landlord on funds borrowed for the purposes of constructing such capital improvements, or, at Landlord’s election in the case of capital improvements that lower operating costs, the amortization amount will be Landlord’s reasonable estimate of annual cost savings; and

All amounts paid under easements, declarations, or other agreements or instruments affecting the Project, including, without limitation, assessments paid to property owners’ or similar associations or bodies and assessments, costs and expenses incurred pursuant to the Declaration, the Phase II Easement Agreement, the Sports Park Easement Agreement or other easements, declarations, agreements or instruments affecting the Project.

6.2 Operating Expense Exclusions. Notwithstanding anything to the contrary in this Lease, Operating Expenses shall not include:

(i) depreciation on the Project; (ii) costs of tenant improvements incurred in renovating leased space for the exclusive use of a particular tenant of the Project, including, without limitation, architectural, engineering and other design consultant fees, costs of permits and licenses, and costs of inspections incurred in connection with such tenant improvements; (iii) brokers’ commissions; (iv) Project mortgage principal or interest; (v) capital items other than those referred to in Section 6.1; (vi) costs of repairs or other work to the extent Landlord is reimbursed by warranties, service contracts, insurance or condemnation proceeds, or otherwise; (vii) costs for utilities and Lighting Maintenance (as defined in Section 11.2) or other expenses charged directly to, or paid directly by, Tenant pursuant to Section 16.4 or other tenants of the Project other than as a part of the Operating Expenses, including such costs charged directly to, or paid directly by, Tenant or other tenants for providing overtime heating, ventilation and air conditioning to the Premises or any other leasable space in the Building (whether or not leased to tenants); (viii) fines, interest and penalties incurred due to the late payment of Operating Expenses; (ix) organizational expenses associated with the creation and operation of the entity which constitutes Landlord; (x) any penalties or damages that Landlord pays to Tenant under this Lease or to other tenants in the Project under their respective leases; (xi) Real Estate Taxes as provided for in Article VII; (xii) advertising, promotional and marketing expenses; (xiii) legal expenses incurred in negotiating leases, collecting rents, evicting tenants or costs incurred in legal proceedings with or against any tenant or to enforce the provisions of any lease; provided, however, Operating Expenses shall include those reasonable, out of pocket attorneys’ fees and other costs and expenses incurred by Landlord in connection with Landlord’s non-discriminatory efforts to enforce of any Rules and Regulations relating to tenants’ or occupants’ use of the Common Areas of the Project, Landlord’s successful negotiations of disputes or claims related to items of Operating Expenses, negotiation of service contracts for the Project that benefit Tenant directly or indirectly and such other matters relating to the maintenance of standards required by Landlord under the Lease; (xiv) costs, fines, and penalties incurred as a result of a violation of laws, including, without limitation, any violations of law for failure to obtain (and subsequently
maintain) any required governmental permits, consents, approvals, or other documentation, except to the extent resulting from the failure of Tenant to pay Rent in a timely manner, or to the extent incurred due to violation by any other tenant in the Project of the terms and conditions of any lease or laws; (xv) contributions to reserves for Operating Expenses or Real Estate Taxes; (xvi), bad debt loss, rent loss, or reserves for bad debt loss or rent loss; (xvii) costs of the correction of any latent defects in the initial design, materials, equipment or workmanship of the Project (as opposed to the cost of normal repair, maintenance and replacement); (xviii) salaries and other compensation and fringe benefits paid to executive employees of Landlord above the level of property manager; (xix) costs incurred in connection with the operation of the business of the entity constituting Landlord, as distinguished from the costs of operating the Building, including Landlord’s general corporate overhead and administrative expenses other than those referred to in Section 6.1; (xx) costs of selling, financing or refinancing Landlord’s interest in the Building or Project, including, without limitation, legal and accounting costs related to the foregoing or to defending any lawsuits with any mortgagee in connection with the foregoing; (xxi) ground rental payments; (xxii) amounts paid to any affiliate of Landlord for goods supplied to the Building or for services (other than the Management Fee, which is subject to the limitations set forth in Section 4.3) in or to the Building, to the extent the same would exceed the costs of such goods sold or services rendered of comparable quality at the then existing market rates by third parties that are not affiliates of Landlord; (xxiii) the cost of acquiring, leasing, restoring, removing or replacing sculptures, paintings or other objects of art located within or outside of the Building or Project, unless decorative and non-investment grade in terms of quality and utilized for cosmetic enhancement of the Common Areas only; (xxiv) the cost of Landlord’s voluntary political contributions or voluntary charitable contributions; (xxv) any costs or expenses necessitated by or resulting from the gross negligence or willful misconduct of Landlord or its agents, employees and/or independent contractors; (xxvi) any cost incurred in connection with upgrading the Building to comply with insurance requirements, life safety codes, ordinances, statutes, or other laws, including without limitation the ADA (as defined in Section 9.3), to the extent the foregoing were required or in effect prior to the Commencement Date, including penalties or damages incurred as a result of non-compliance; (xxvii) costs incurred to test, survey, cleanup, contain, abate, remove, or otherwise remedy Hazardous Materials incurred as a result of the presence of any Hazardous Materials which are other than the Pre-existing Contamination (as defined in Section 9.2(b)) in, on, or under the Building or Project as of the Date of Lease, to the extent such Hazardous Materials (other than the Pre-existing Contamination) are in violation of applicable laws, statutes, ordinances and governmental rules, regulations or requirements in effect as of the Date of Lease; (except that Operating Expenses shall include costs incurred in connection with the prudent and ordinary operation and maintenance of the Building, such as monitoring air quality and cleaning up minor chemical spills); (xxviii) any and all costs and expenses to the extent incurred in connection with the clean-up, removal or remediation of the Pre-existing Contamination regardless of whether such Pre-existing Contamination is in violation of applicable laws, statutes, ordinances and governmental rules, regulations or requirements in effect as of the Date of Lease; provided, however that Landlord shall be permitted to include in Operating Expenses the out of pocket costs incurred by Landlord in connection with the inspection, maintenance and/or monitoring (as opposed to the cleanup, removal or remediation) of the Pre-existing Contamination; (xxix) the cost of litigation or arbitration and any award paid by Landlord as a result thereof for tort liability when a judgment of negligence is rendered against Landlord; and (xxx) costs of lease concessions granted by Landlord to Tenant or other tenants of the Project, including, without limitation, lease
takeover obligations, build out allowances, and moving allowances; and (xxxi) costs for common area expenses, upgrades, and improvements attributable solely to the Phase I Buildings and to any Common Area located on the Land on which Phase I Buildings are located, except with respect to the Sports Park, 25% of which are allocated to the Building.

6.3 Tenant’s Right to Audit. Tenant shall have a right, at Tenant’s sole cost and expense, to audit not more than once per Calendar Year Landlord’s Operating Expense Rental reconciliation statement upon the following terms and conditions. Tenant shall notify Landlord in writing that it is exercising its right to audit within 90 days following delivery of the Operating Expense Rental reconciliation statement, indicating in such notice with reasonable specificity those cost components of Operating Expense Rental to be subject to audit. The audit shall take place at Landlord’s regional offices or, at Landlord’s option, the Project, at a time mutually convenient to Landlord and Tenant (but not later than 60 days after receipt of Tenant’s notice to audit). Except as Landlord may consent in writing, the audit shall be completed within 45 days after commencement. No copying of Landlord’s books or records will be allowed. The audit may be accomplished by either Tenant’s own employees with accounting experience reasonably sufficient to conduct such review, or a nationally or regionally recognized public accounting firm mutually acceptable to Landlord and Tenant that is engaged on either a fixed price or hourly basis, and is not compensated on a contingency or bonus basis. Under no circumstances shall Landlord be required to consent to an accounting firm that is also a tenant of Landlord (or any Landlord affiliate) in the Project. The records reviewed by Tenant shall be treated as confidential and prior to commencing the audit, Tenant and any other person which may perform such audit for Tenant, shall execute a Confidentiality Agreement in a form reasonably acceptable to Landlord. A copy of the results of the audit shall be delivered to Landlord within 30 days after the completion of the audit. If Landlord and Tenant determine that Operating Expense Rental for the Calendar Years audited is less than reported, Landlord shall give Tenant a credit in the amount of the overpayment toward Tenant’s next monthly payment of estimated Operating Expense Rental, or, in the event this Lease has expired or terminated and no Event of Default exists, Landlord shall pay Tenant the total amount of such overpayment within 30 days. If Landlord and Tenant determine that Operating Expense Rental for the Calendar Years audited is more than reported, Tenant shall pay Landlord the amount of any underpayment within 30 days. Failure by Tenant to timely request an audit, or to timely deliver to Landlord the results of the audit, or to follow any of the procedures set forth in this Section 6.3 is deemed a waiver of the applicable audit right and any right to contest Operating Expense Rental for the applicable Calendar Year and, except as expressly provided in this Section 6.3 with respect to the 2020 Audit (as defined in this Section 6.3) and any Prior Year Audits (as defined in this Section 6.3), is deemed acceptance of the Operating Expense Rental contained in the Operating Expense Rental reconciliation statement for the applicable Calendar Year. Provided that 2020 Audit is completed as contemplated herein, as part of its audit, Tenant’s auditors may review Landlord’s books and records for the Calendar Year connected to the most current reconciliation statement and the Calendar Year prior thereto (“Prior Year Audit”), unless Tenant previously audited such prior Calendar Year, in which case Tenant shall not have the right to conduct another audit of such prior Calendar Year. Landlord agrees to maintain at all times its books and records for no less than the then immediately preceding two (2) year period. Any audit review by Tenant shall not postpone or alter the liability and obligation of Tenant to pay any Operating Expense Rental due under the terms of this Lease. If an Event of Default exists at the time that Tenant requests an audit, Tenant must cure the Event of Default as a condition to conducting the audit, but shall still have 45 days
to complete the audit upon commencement of the audit. No assignee or subtenant shall have any right to conduct an audit except for a permitted assignee or subtenant under Article X of this Lease occupying the entire Premises and no assignee or subtenant shall conduct an audit for any period during which such assignee or sublessee was not in possession of the Premises or for any period in which Tenant has conducted an audit. Landlord and Tenant agree that in order to confirm the proper allocation of Operating Expenses for the Building and the Project attributable to the Premises, Tenant will audit Landlord’s 2020 Operating Expense Rental (the “2020 Audit”) within 90 days following receipt by Tenant of the 2020 Operating Expense Rental reconciliation statement pursuant to the terms of this Section 6.3. Tenant and Landlord will equally split the cost of the 2020 Audit. For any audit following the 2020 Audit, if Landlord and Tenant finally determine as a result of any such audit by Tenant of Landlord’s books and records that Tenant’s actual Operating Expense Rental for the Calendar Year audited is less than the Operating Expense Rental charged to Tenant for such Calendar Year by more than five percent (5%), as substantiated, at Landlord’s option and expense, by a certified public accountant, then upon receipt of Tenant’s documented invoice, Landlord shall credit to Tenant’s next monthly payment of estimated Operating Expense Rental all reasonable out-of-pocket third party costs incurred by Tenant in performing the audit of such Calendar Year, which amount shall not exceed $10,000.00, or if the Lease has expired or terminated, then Landlord shall pay such amount to Tenant within 30 days after receipt of Tenant’s documented invoice, less any amounts applied in accordance with this Lease to cure an existing Event of Default.

VII. REAL ESTATE TAXES

Real Estate Taxes shall be defined as (i) all real property taxes, assessments that are assessed, levied, or imposed on the land, buildings, and/or other improvements comprising all or part of the Project, or which are otherwise imposed in connection with the ownership, leasing, and operation of the Project; (ii) all personal property taxes levied by any public authority on personal property of Landlord used in the management, operation, maintenance and repair of the Project; (iii) all taxes, assessments and reassessments of every kind and nature whatsoever levied or assessed in lieu of or in substitution for existing or additional real or personal property taxes and assessments on the Project, including any so-called value-added tax; and (iv) amounts necessary to be expended because of governmental orders, charges or other actions, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature for public improvements, services, benefits or any other purposes which are assessed, levied, confirmed, imposed or become a lien upon the Premises or Project or become payable during or are allocable to the Term; further, Tenant shall reimburse Landlord within 30 days after demand for all taxes and assessments required to be paid by Landlord (except to the extent included in Real Estate Taxes by Landlord), when (a) such taxes are measured by or reasonably attributable to the cost or value of (i) Tenant’s equipment, furniture, fixtures and other personal property located in the Premises, or (ii) the Tenant Work (as defined in Exhibit B-1) or any other leasehold improvements made in or to the Premises by or for Tenant, to the extent the cost or value of such Tenant Work or other leasehold improvements exceeds the cost or value of a Building standard build-out as reasonably determined by Landlord regardless of whether title to such Tenant Work or improvements is vested in Tenant or Landlord; (b) such taxes are assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project (including the Parking Facilities); or (c) such taxes are assessed upon this transaction or any document to which Tenant is a party creating

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or transferring an interest or an estate in the Premises, or upon rent or receipts (including any business license tax or gross receipts tax based on the rents or other revenues received by Landlord), the square footage of land or improvements within the Project, or the occupancy by tenants of space within the Project. The Building and the Other Buildings (except for the Amenity Building, which is part of the Building 3 tax parcel) each constitute separate tax parcels, but with respect to Real Estate Taxes shared among the Building and one or more Other Buildings or relating to amenities or services provided only to, or used on a disproportionate basis by, Tenant or other specific tenants, Landlord shall allocate on an equitable basis such Real Estate Taxes to the Building and Other Buildings or among specific tenants of the Project, as determined in Landlord’s reasonable discretion; provided that (A) fifty percent (50%) of the Real Estate Taxes of the Amenity Building and the Phase II Common Area, twenty five percent (25%) of the Real Estate Taxes of the Sports Park and forty percent (40%) of the Real Estate Taxes of the Phase II Parking Garage shall be allocated to the Building and (B) except for the Real Estate Taxes attributable to the Sports Park, Real Estate Taxes attributed solely to the Phase I Buildings and to any Common Area located on the Land on which Phase I Buildings are located shall not be allocated to the Building. Real Estate Taxes include any and all increases in Real Estate Taxes resulting from a change in ownership or new construction with respect to the Premises, the Building or the Project. Further, for the purposes of this Article VII, Real Estate Taxes shall include the reasonable expenses (including, without limitation, attorneys’ fees) incurred by Landlord in challenging or obtaining or attempting to obtain a reduction of such Real Estate Taxes, regardless of the outcome of such challenge, and any costs incurred by Landlord for compliance, review and appeal of tax liabilities. Notwithstanding the foregoing, Landlord shall have no obligation to challenge Real Estate Taxes. If as a result of any such challenge, a tax refund is made to Landlord, then provided no Event of Default exists under this Lease, the net amount of such refund after payment of all costs and expenses of the challenge shall be deducted from Real Estate Taxes due in the Calendar Year such refund is received. In the case of any Real Estate Taxes which may be evidenced by improvement or other bonds or which may be paid in annual or other periodic installments, Landlord shall elect to cause such bonds to be issued or cause such assessment to be paid in installments over the maximum period permitted by law. Nothing contained in this Lease shall require Tenant to pay (1) any franchise, gift, estate, inheritance or succession transfer tax of Landlord, or any income, profits or revenue tax or charge, upon the net income of Landlord from all sources, or (2) any penalties or interest incurred by reason of Landlord’s late payment of Real Estate Taxes. Tenant hereby waives any and all rights to protest reappraised values or to receive notice of reappraised values regarding the Project or other property of Landlord.

VIII. PARKING

8.1 General. During the Term, Tenant shall have the right in common with other tenants and occupants in the Phase II Buildings to use the Parking Space Allocation (as defined in Section 1.17). Landlord shall not reduce the number of spaces designated as unreserved, reserved, Car-Charging Stalls or Future Car-Charging Stalls in the Parking Space Allocation without Tenant’s prior written consent, which consent may be withheld in Tenant’s sole discretion. All parking rights are subject to the Rules and Regulations (as defined in Article XVIII), validation, key-card, sticker or other identification systems set forth by Landlord from time to time. Landlord may restrict certain portions of the Parking Facilities for the exclusive use of one or more tenants of the Project and may designate other areas to be used at large only by customers and visitors of
tenants of the Project. Landlord reserves the right to delegate the operation of the Parking Facilities to a parking operator which shall be entitled to all the obligations and benefits of Landlord under this Article VIII; provided, however, Landlord shall have no liability whatsoever for claims arising through acts or omissions of any independent operator of the Parking Facilities. Except in connection with an assignment or sublease that is expressly permitted under this Lease, Tenant’s parking rights and privileges described herein are personal to Tenant and may not be assigned or transferred; provided that Tenant’s Agents may use Tenant’s Parking Space Allocation. Landlord shall have the right to cause to be removed any vehicles of Tenant or its Agents that are parked in violation of this Lease or in violation of the Rules and Regulations of the Building, without liability of any kind to Landlord.

8.2 Parking Space Alterations. Provided that no Event of Default exists under this Lease or would exist but for the pendency of any cure period provided for in Section 20.1 and that the Parking Space Alterations (as defined in this Section 8.2) are performed and completed in accordance with Section 8.2 and Article XII of the Lease, Tenant, at Tenant’s sole cost and expense, shall have the right to make Alterations (as defined by Section 12.3) to the Future Car-Charging Stalls in order to connect to the existing electrical conduit and convert the Future Car-Charging Stalls into additional Car-Charging Stalls by installing equipment, facilities and Alterations consistent with the existing Car-Charging Stalls as necessary in order to accomplish such conversion (collectively, the “Parking Space Alterations”): provided, however, Landlord reserves the right as provided in Article XII to perform the Parking Space Alterations on behalf of Tenant.

8.3 Valet Parking. Tenant shall have the right, at its sole cost and expense, to establish valet parking with respect to parking spaces that are included in Tenant’s Parking Space Allocation and located in a portion of the Surface Lot or the Phase II Parking Garage as reasonably agreed by Landlord and Tenant (“Valet Spaces”) and to use the Common Area driveways and aisles to and from the Building and the Valet Spaces, subject to the terms of this Section 8.3. In such event, Landlord and Tenant shall execute a license agreement in substantially the form of Landlord’s standard form license agreement (“License Agreement”) for the Project, which License Agreement shall set forth (a) the mutually acceptable terms for Tenant’s license of the Valet Spaces, (b) the reasonable qualifications and insurance requirements applicable to the valet services provider (“Valet Service”) selected by Tenant and approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), to provide, at Tenant’s sole cost and expense, the valet and parking services for Tenant’s Agents to and from the Building and the Valet Spaces, pursuant to a contract between Tenant and such Valet Service, (c) the location of the Valet Spaces, and (d) the location in the Common Area adjacent to the Building where the Valet Service will pick-up and return the vehicles of Tenant’s Agents and of the driveways and aisles the Valet Service will use to and from the Building and the Valet Spaces, and such other mutually acceptable terms that Landlord and Tenant determine appropriate.

IX. USE AND REQUIREMENTS OF LAW

9.1 Use. The Premises will be used only for the Permitted Use and for no other purpose. Tenant and Tenant’s Agents will not: (i) do or permit to be done in or about the Premises, do in or about the Project, nor bring to, keep or permit to be brought or kept in the Premises or bring to or keep in the Project, anything which is prohibited by or will in any way conflict with any law,
statute, ordinance or governmental rule or regulation which is now in force or which may be enacted or promulgated after the Date of Lease or with the Declaration; (ii) do or permit anything to be done in or about the Premises, or do in or about the Project, which will in any way obstruct or interfere with the rights of other tenants of the Building or Project; (iii) do or permit anything to be done in or about the Premises, or do in or about the Project, anything which is dangerous to persons or property; or (iv) cause, maintain or permit any nuisance in, on or about the Premises or cause or maintain any nuisance in, on or about the Project; or (v) commit or allow to be committed any waste in, on or about the Premises or commit any waste in, on or about the Project. At its sole cost and expense, Tenant will promptly comply with (a) all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or in force after the Commencement Date of this Lease regarding the operation of Tenant’s business and the use, condition, configuration and occupancy of the Premises (except to the extent of Landlord’s obligations under Section 9.3); (b) the certificate of occupancy issued for the Building and the Premises; and (c) any recorded easement agreements, covenants, conditions and restrictions, if any, which affect the use, condition, configuration and occupancy of the Premises or the Project, including, without limitation, the Declaration, the Phase II Easement Agreement and the Sports Park Easement Agreement. Notwithstanding anything to the contrary contained in this Lease, Tenant’s obligations under this Section 9.1 shall not include the performance of structural alterations or structural repairs to the Premises (“Structural Work”), except to the extent such work is required in connection with (a) Tenant’s Alterations (as defined in Section 12.3), (b) Tenant’s particular use of the Premises (as opposed to Tenant’s use of the Premises for the Permitted Use in a normal and customary manner), or (c) a change in the Permitted Use stated in Section 1.8, regardless of whether Landlord approves such change. The term “Permitted Use” specifically excludes any use as a call center or similar high-density use that exceeds the Standard Density Limitation (as defined in Exhibit C), as an employment agency for day labor; by a governmental agency; or that is inconsistent with the Building being a Class A professional office building consistent with other Class A office buildings in San Jose and Santa Clara, California market areas.


(a) Tenant Obligations. Tenant shall not bring or allow any of Tenant’s Agents to bring on the Premises or the Project, any asbestos, petroleum or petroleum products, used oil, explosives, toxic materials or substances defined as hazardous wastes, hazardous materials or hazardous substances under any federal, state or local law or regulation (“Hazardous Materials”), except for routine office, lab, research and development, and janitorial supplies used on the Premises and stored in the usual and customary manner and quantities, and in compliance with all applicable environmental laws and regulations. In the event of any release of Hazardous Materials on, from, under or about the Premises or the Project, Landlord shall have the right, but not the obligation to the extent such release is as the result of Tenant’s occupancy or use of the Premises, to cause Tenant, at Tenant’s sole cost and expense, to clean up, remove, remediate and repair any soil or groundwater contamination or other damage or contamination as required by and in conformance with the requirements of applicable law. Tenant shall indemnify, protect, hold harmless and defend (by counsel acceptable to Landlord) Landlord, its affiliates, its Agents and each of their respective Agents, successors and assigns, from and against any and all demands, claims, causes of action, damages, penalties, fines, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys’ fees and court costs) (“Claims”) to the extent caused by or arising out of (i) a violation of the foregoing
prohibitions by Tenant or Tenant’s Agents or (ii) the presence or release of any Hazardous Materials on, from, under or about the Premises, the Project or other properties as the result of Tenant’s occupancy or use of the Premises. Neither the written consent of Landlord to the presence of the Hazardous Materials, nor Tenant’s compliance with all laws applicable to such Hazardous Materials, shall relieve Tenant of its indemnification obligation under this Lease. Tenant shall immediately give Landlord written notice (a) of any suspected breach of this Section 9.2, (b) upon learning of the presence or any release of any Hazardous Materials within or about the Premises, or (c) upon receiving any notices from governmental agencies or other parties pertaining to Hazardous Materials which may affect the Premises. Landlord shall have the right from time to time, but not the obligation, to (1) request from Tenant information showing Tenant’s compliance with its obligations under Section 9.2; and (2) to enter upon the Premises in accordance with Article XIV to conduct such inspections and undertake such sampling and testing activities as Landlord deems necessary or desirable to determine whether Tenant is in compliance with its obligations under Section 9.2, except that in no event may Landlord sample or test tenant raw materials, lab materials, products or processes, except with the prior written consent of Tenant, which consent may be withheld if commercially reasonable alternative means exist to assure Tenant compliance. Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be responsible or liable under this Section 9.2 in any manner whatsoever for any Claims that arise or result from the Pre-Existing Contamination, except for any Tenant Responsible Contamination (as defined in Section 9.2(b)), subject to the waivers set forth in Section 15.5.

(b) Hazardous Materials Disclosure: Landlord Obligations.

(i) Pursuant to the provisions of California Health & Safety Code Section 25359.7, Landlord disclosed to Tenant prior to the Date of Lease that the Project has been developed on the site of a former landfill and that Hazardous Materials have come to be located at the Project, including without limitation related to the South Bay Asbestos Superfund Site. Pursuant to the provisions of California Health & Safety Code Section 25249.6 (Proposition 65), Landlord provided Tenant with the following warning: “WARNING: ! The Hazardous Materials that are located at the Project could expose persons to chemicals, including asbestos, which are known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov.”. For more information also refer to the Environmental Reports (as defined in this Section 9.2(b)). Tenant acknowledges that Landlord made available to Tenant for review, and Tenant had the opportunity to review, prior to the Date of Lease the reports and other materials identified on Exhibit F attached to this Lease, which is attached hereto and incorporated herein by this reference (collectively, the “Environmental Reports”) regarding actual or potential releases of Hazardous Materials at, on, under, about, or otherwise affecting the Project. Landlord represents that to its knowledge based on the recommendations of Crawford Consulting, Inc., Landlord has provided Tenant with access to the Environmental Reports and that such Environmental Reports comprise all material, relevant reports in Landlord’s possession or in the possession of its consultant, Crawford Consulting, Inc., related to the former landfill and Pre-Existing Contamination. Landlord and Tenant acknowledge and agree that (A) those Environmental Reports identified as “Confidential” in Exhibit F, have been agreed upon between Landlord and Tenant to continue to be treated as Confidential Information (as defined in the Environmental NDA (as defined in this Section 9.2(b)) from and after the Date of Lease, (B) Tenant is obligated under the terms of the Confidentiality Agreement dated February 13, 2019 (“Environmental NDA”) between Landlord and Tenant, which Environmental NDA is attached.
hereto as Exhibit F-1, to protect the confidentiality of such Confidential Information in accordance with the terms of the Environmental NDA, and such obligation shall continue from and after the Date of Lease with respect to such Confidential Information, (C) any other reports and materials delivered on or after the Date of Lease on behalf of Landlord to Tenant which Landlord identifies or marks as “confidential” or “proprietary” shall constitute Confidential Information that is subject to the Environmental NDA (potentially including, without limitation, reports, data, documents, materials and other information provided on behalf of Landlord, or prepared in connection with Tenant’s evaluations pursuant to Section 9.2(b)) and Tenant shall be obligated to protect the confidentiality of such Confidential Information in accordance with the terms of the Environmental NDA, (D) Tenant’s obligations under this Section 9.2(b) with respect to all Confidential Information shall survive the expiration or earlier termination of this Lease, (E) Landlord shall continue to make all of the Environmental Reports available for Tenant’s review during the Term upon Tenant’s request and, to the extent applicable, under the terms of the Environmental NDA, and (F) Landlord makes no representations or warranties as to the accuracy of the contents of the Environmental Reports, and no representations or warranties regarding the actual or potential releases, except as set forth below in this Section 9.2(b). Tenant acknowledges that, prior to the Date of Lease, it has had the opportunity to conduct all investigation and testing of the Premises with respect to its environmental condition, either by itself or with the assistance of an expert, as it deems necessary, but that Tenant has not done any testing of the Premises with respect to its environmental condition.

(ii) During the Term, Landlord shall give written notice to Tenant as soon as reasonably practicable of (A) any written communication of any inquiry or claim received from any governmental authority concerning any Hazardous Materials which relates to the Project, and (B) any contamination of the Premises or the Project by Hazardous Materials of which Landlord has notice or actual knowledge and which constitutes a violation of applicable law, statute, ordinance or governmental rule or regulation or results in damage or contamination for which clean up, removal, remediation or repair is required in conformance with applicable laws, statutes, ordinances or governmental rules or regulations. Landlord shall, at its expense (which may be included in Operating Expenses, subject to the terms of Article VI above, including, without limitation, the exclusions set forth in Section 6.2), through its own actions, or by exercising commercially reasonable efforts to compel the actions of others to, observe, comply with and meet all requirements of applicable laws, statutes, ordinances or governmental rules or regulations and the Declaration in connection with the monitoring, inspection, maintenance, repair and remediation of any Hazardous Materials in, on, or under the Building or Project as of the Date of Lease, including, without limitation, performance of the maintenance and operation obligations of Landlord with respect to the methane mitigation systems at the Building as set forth in the Operations, Maintenance and Monitoring Plan and Vapor Mitigation System manual dated May 2018 prepared by Haley & Aldrich, Inc. for the methane mitigation systems at the Building, Building 3, the Amenity Building, the Parking Structure, and the aboveground Parking Facilities and other Common Areas (except for the Parking Facilities and Common Area located on the Land on which Phase I Buildings are located) (“MMS O&M Manual”). Landlord shall exercise commercially reasonable efforts to coordinate with Tenant in connection with the Landlord’s performance of its obligations under this Section 9.2(b)(ii), in order to minimize any material adverse effect to Tenant’s use of and access to the Premises and Common Areas. In addition, Landlord shall: 1) provide Tenant upon Tenant’s request and subject to the terms of the Environmental NDA if applicable, the annual report and any other reports, notices, amendments
or other documents prepared, and provided or made available to Landlord, by the Association (as defined by the Declaration) pursuant to the Declaration, the semi-annual methane detection and calibration reports created with respect to the Building and the Amenity Building and, to the extent prepared and available, any other material documents, data and reports, including as to maintenance and repair, that Landlord is obligated to prepare under the Declaration or applicable laws, statutes, ordinances and governmental rules, regulations or requirements related to the former landfill and the Improvements (as defined by the Declaration) comprising the related cap and equipment and systems at the Project, including, without limitation, the Methane Mitigation Systems or that are related to Pre-Existing Contamination at the Project; 2) except in the case of an Emergency (as defined in Article XIV), provide Tenant with reasonable prior written notice of any excavation, any other work or expected event on the Project of which Landlord is aware and reasonably expects to both affect the pre-existing contamination and disrupt Tenant’s use of the Premises or Common Areas; 3) except in the case of an Emergency, provide Tenant with reasonable prior written notice of any excavation, any other work or expected event on the Project of which Landlord is aware and that Landlord reasonably expects to (or has been advised by the Association or an owner of another Building may) pierce the landfill cap and 4) immediately provide notice to Tenant of any data, condition or event of which Landlord is aware that is related to the Pre-Existing Contamination and that poses risk to the health or welfare of Tenant or any Tenant employee or invitee and Landlord promptly shall provide Tenant with all related material documents, data and reports as they become available to Landlord thereafter, subject to the terms of the Environmental NDA as applicable to any Confidential Information, as determined pursuant to Section 9.2(b).

(iii) Landlord shall indemnify, defend and hold harmless Tenant from and against any and all Claims to the extent arising out of or in connection with any Hazardous Materials to the extent resulting from (A) the existence of Hazardous Materials brought on the Premises, Building or Project by Landlord or its Agents; (B) Landlord’s breach of Section 9.2(b)(ii) or (C) Hazardous Materials existing in or under the Land on which the Project is situated at the Date of Lease (collectively, “Pre-Existing Contamination”): provided, however, Landlord’s obligation to indemnify, defend and hold harmless Tenant as provided in this Section 9.2(c)(iii) shall be subject to the waivers in Section 15.5 and shall not apply to the extent of remediation resulting solely from, or to the extent of remediation increased due to, Tenant’s or Tenant’s Agents’ release of Hazardous Materials, negligent, knowing or intentional exacerbation of Pre-Existing Contamination, violation of any applicable laws, statutes, ordinances or governmental rules or regulations or breach by Tenant of its obligations under this Section 9.2 (collectively, and separately referred to as “Tenant Responsible Contamination”).

(c) The obligations of Landlord and Tenant under this Section 9.2 shall survive the expiration or earlier termination, for any reason, of this Lease.

9.3 Compliance with ADA: Warm Shell Condition. Notwithstanding any other statement in this Lease, the provisions in this Section 9.3 shall govern the parties’ compliance with the Americans With Disabilities Act of 1990, as amended from time to time, Public Law 101-336; 42 U.S.C. §§12101, et seq. (the foregoing, together with any similar state statute governing access for the disabled or handicapped collectively referred to as the “ADA”).
(a) Landlord represents and warrants that, to Landlord’s actual knowledge, as of the Date of Lease, the Building, the Premises, the Parking Facilities and Common Areas comply in all material respects with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force, including, but not limited to, the ADA and Title 24 (as the foregoing are applied and interpreted by the applicable governmental authorities or quasi-governmental authorities as of the Date of Lease) and with respect to the Premises only, applicable to a “warm shell” condition, without regard to any specific use of the Premises, Alterations or the Tenant Work; it being agreed by the parties that Landlord’s representation above regarding compliance with all applicable laws, statutes, ordinances and governmental rules, regulations or requirements, including, but not limited to, the ADA and Title 24, is based solely upon the receipt by Landlord of the Permit Records issued by the City of San Jose under Permit# 2016-119262CI and the absence of receipt by Landlord from the City of San Jose of any notification of subsequent non-compliance.

(i) Landlord shall not be liable to Tenant for any damages for any violation that is contrary to the foregoing representation, but as Tenant’s sole remedy, Landlord shall perform such corrective work as may be required in this Section 9.3(a)(i). To the extent governmentally required as of Date of Lease, Landlord shall be responsible for compliance with Title III of the ADA with respect to any repairs, replacements or alterations to the core and shell of the Building, and such expense shall not be included as an Operating Expense of the Project; provided, however, if compliance with ADA under this Section 9.3 is required due to (a) Alterations, (b) the Tenant Work, (c) the installation of any of Tenant’s furniture, fixtures, equipment or property, (d) Tenant’s particular use or occupancy of the Premises (as opposed to Tenant’s use and occupancy of the Premises for the Permitted Use in a normal and customary manner), (e) the particular manner in which Tenant conducts its business in the Premises (f) a change in the Permitted Use stated in Section 1.8, or (g) the Access Improvements (as defined in Section 9.3(c)) that are Tenant’s responsibility under Section 9.3(c), regardless of whether Landlord approves such change, then such compliance shall be Tenant’s responsibility under Section 9.3(b) (collectively and each a, “Tenant ADA Responsibility”). Landlord shall have the right to apply for and obtain a waiver or deferment of compliance, the right to contest any such violation in good faith, including, but not limited to, the right to assert any and all defenses allowed by applicable laws, statutes, ordinances and governmental rules, regulations or requirements, and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by applicable laws, statutes, ordinances and governmental rules, regulations or requirements, and Landlord’s obligation to perform such corrective work under this Section 9.3(a)(i) shall not apply until after the exhaustion of any and all rights to appeal or contest. Notwithstanding the foregoing, if prior to the completion of the Tenant Work, Tenant does not notify Landlord in writing of any violation or alleged violation of applicable laws, statutes, ordinances and governmental rules, regulations or requirements as of the Date of Lease respect to the Building, Parking Facilities or Common Area, then the issuance of a temporary or permanent certificate of occupancy (or sign off on the job card) for the Tenant Work to be constructed pursuant to the Work Agreement shall conclusively establish that the foregoing representation in this Section 9.3(a) was true and correct, and Landlord shall thereafter have no further liability or responsibility pursuant to this Section 9.3(a)(i).

(ii) To the extent governmentally required subsequent to the Date of Lease as a result of an amendment to Title III of the ADA or any regulation thereunder enacted
subsequent to the Date of Lease, Landlord shall be responsible for compliance with Title III of the ADA with respect to any repairs, replacements or alterations to the core and shell of the Building, and such expense shall be included as an Operating Expense of the Project, subject to the terms of **Article VI**: provided, however, if such compliance is required due to a Tenant ADA Responsibility, then such compliance shall be Tenant’s responsibility under **Section 9.3(b)**.

(iii) To the extent governmentally required as of the Commencement Date, or subsequent to the Commencement Date of this Lease as a result of an amendment to Title III of the ADA or any regulation thereunder enacted subsequent to the Commencement Date of this Lease, Landlord shall be responsible for compliance with Title III of the ADA with respect to any repairs, replacements or alterations to the Common Area of the Project, and such expense shall be included as an Operating Expense of the Project, subject to the terms of **Article VI**. Landlord shall indemnify, defend and hold harmless Tenant and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys’ and consultants’ fees) arising out of or in any way connected with Landlord’s failure to comply with Title III of the ADA as required above.

(b) To the extent governmentally required, Tenant shall be responsible for compliance, at its expense, with Titles I of the ADA and Title III of the ADA with respect to the Premises (including, without limitation, the Tenant Work), any Alterations and any Tenant ADA Responsibility; provided, however, Tenant shall not be responsible for compliance with Title III of the ADA with respect to the core and shell of the Building, except for the Tenant ADA Responsibility. Tenant shall indemnify, defend and hold harmless Landlord and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys’ and consultants’ fees) arising out of or in any way connected with Tenant’s failure to comply with Titles I and III of the ADA as required above.

(c) **Statement Required under California Civil Code § 1938.** The Premises has not undergone inspection by a Certified Access Specialist and the Premises has not been determined to meet all applicable construction-related accessibility standards pursuant to California Civil Code § 55.53. Except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Project in order to comply with accessibility standards. Landlord hereby discloses pursuant to California Civil Code Section 1938 as follows: “A Certified Access Specialist (“CASp”) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs to correct violations of the construction-related accessibility standards within the premises.” Landlord and Tenant hereby acknowledge and agree that in the event that Tenant elects to perform a CASp inspection of all or any portion of the Premises hereunder (the “Inspection”), such Inspection shall be (a) performed at Tenant’s sole cost and expense, (b) limited to the Premises.
and the Common Areas of the Building and the portion of the Land on which the Building is located, and (c) performed by a CASp who has been approved or designated by Landlord prior to the Inspection. Any Inspection must be performed in a manner which minimizes the disruption of business activities in the Project, and at a time reasonably approved by Landlord. Landlord reserves the right to be present during the Inspection. Tenant agrees to: (i) promptly provide to Landlord a copy of the report or certification prepared by the CASp inspector upon request (the “Report”) and (ii) keep the information contained in the Report confidential, except to the extent required by applicable laws, statutes, ordinances and governmental rules, regulations or requirements or to the extent disclosure is needed in order to complete any necessary modifications or improvements required to comply with all applicable accessibility standards under the ADA or other state or federal laws, statutes, ordinances and governmental rules, regulations or requirements as well as any other repairs, upgrades, improvements, modifications or alterations required by the Report or that may be otherwise required to comply with accessibility requirements, the ADA or other applicable laws, statutes, ordinances and governmental rules, regulations or requirements (the “Access Improvements”). As part of the Tenant ADA Responsibility, if governmentally required, Tenant shall be solely responsible for the cost of Access Improvements to the Premises necessary to correct any such violations of construction-related accessibility standards identified by such Inspection as required by the ADA or other applicable laws, statutes, ordinances and governmental rules, regulations or requirements, which Access Improvements may, at Landlord’s option, be performed in whole or in part by Landlord at Tenant’s expense, payable as Additional Rent within thirty (30) days following Landlord’s demand; provided, however, nothing in this Section 9.3(c) shall be construed to make Landlord responsible under this Lease for performing, or paying the cost of, any Access Improvements that are identified by any such Inspection with respect to the Premises, the Building or the Project, unless Landlord is otherwise obligated to perform, or pay for, such Access Improvements under Section 9.3(a) or other provisions of this Lease.

X. ASSIGNMENT AND SUBLETTING

10.1 Landlord’s Consent.

(a) Except as otherwise provided in Sections 10.4 and 10.5, Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or rent (or permit a third party to occupy or use) the Premises, or any part thereof, nor shall any assignment or transfer of this Lease or the right of occupancy hereunder be effected by operation of law or otherwise, without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed, except as provided otherwise in this Section 10.1. Notwithstanding anything to the contrary in this Section 10.1, Landlord may withhold consent in its sole discretion to any sublease, or other occupancy by a third party, of a portion Premises that comprises less than an entire floor, unless such portion of a floor is located in the First Floor Premises. Subject to the terms of Sections 10.4 and 10.5. A transfer at any one time or from time to time of a majority interest in Tenant (whether stock, partnership interest or other form of ownership or control) shall be deemed to be an assignment of this Lease, unless at the time of such transfer Tenant is an entity whose outstanding stock is listed on a recognized security exchange. Within 10 business days following Landlord’s receipt of Tenant’s request for Landlord’s consent to a proposed assignment, sublease, or other encumbrance, together with all information required to be delivered by Tenant pursuant to the provisions of this Section 10.1, Landlord shall: (i) consent to such proposed
transaction; (ii) refuse such consent with a statement of the reasons for such refusal; or (iii) elect to terminate this Lease in the event of an assignment, or in the case of a sublease, terminate this Lease as to the portion of the Premises proposed to be sublet in accordance with the provisions of Section 10.2.

If Landlord fails to timely deliver to Tenant notice of Landlord’s consent, refusal or election to terminate with respect to a proposed assignment or sublease, Tenant may send a second (2nd) notice (“2nd Notice of Proposed Transfer”) to Landlord, which notice must contain the following inscription, in bold faced lettering: “SECOND NOTICE DELIVERED PURSUANT TO PARAGRAPH 10.1 OF LEASE - FAILURE TO TIMELY RESPOND WITHIN FIVE (5) BUSINESS DAYS SHALL RESULT IN DEEMED CONSENT TO ASSIGNMENT OR SUBLEASE.” If Landlord fails to deliver notice of Landlord’s consent, refusal or election to terminate with respect to a proposed transfer described in Tenant’s 2nd Notice of Proposed Transfer within five (5) business days after receipt of such 2nd Notice of Proposed Transfer, Landlord shall be deemed to have consented to the proposed transfer described in the 2nd Notice of Proposed Transfer. Any assignment, sublease or other encumbrance without Landlord’s written consent or deemed consent shall be voidable by Landlord and, at Landlord’s election, constitute an Event of Default hereunder. Without limiting other instances in which Landlord may reasonably withhold consent to an assignment or sublease, Landlord and Tenant acknowledge that it shall be reasonable for Landlord to withhold consent (a) if an Event of Default exists under this Lease or if an Event of Default would exist but for the pendency of any cure periods provided under Section 20.1; or (b) if the proposed assignee or sublessee is: a governmental entity; a person or entity with whom Landlord has negotiated for space in the Project during the prior three months and for whom Landlord has space available to meet their needs; a present tenant in the Project; a person or entity whose tenancy in the Project would not be a Permitted Use or would violate any exclusivity arrangement which Landlord has with any other tenant; a person or entity of a character or reputation or engaged in a business which is not consistent with the quality of the Project; or not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under this Lease on the date consent is requested, but taking into account the financial condition of Tenant if and to the extent that Tenant continues to be liable for the obligations under this Lease. If Tenant requests Landlord’s consent to a specific assignment or subletting, Tenant will submit in writing to Landlord: (1) the name and address of the proposed assignee or subtenant; (2) a counterpart of the proposed agreement of assignment or sublease; (3) reasonably satisfactory information as to the nature and character of the business of the proposed assignee or subtenant, and as to the nature of its proposed use of the space; (4) banking, financial or other credit information reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed assignee or subtenant; (5) executed estoppel certificates from Tenant containing such information as provided in Section 24.4; and (6) any other information reasonably requested by Landlord. Notwithstanding anything to the contrary contained herein, if Tenant claims that Landlord has unreasonably withheld, conditioned or delayed its consent under this Section 10.1, Tenant’s sole remedies shall be a declaratory judgment and an injunction for the relief sought and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to obtain damages or terminate this Lease, whether under California Civil Code Section 1995.310 or otherwise.
(b) Notwithstanding that the prior express written permission of Landlord to any of the aforesaid transactions may have been obtained, the following shall apply:

(i) In the event of an assignment, contemporaneously with the granting of Landlord’s aforesaid consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties, and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefor along with Tenant.

(ii) All terms and provisions of this Lease shall continue to apply after any such transaction.

(iii) In any case where Landlord consents to an assignment, transfer, encumbrance or subletting, the undersigned Tenant and any Guarantor shall nevertheless remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Tenant hereunder (including, without limitation, the obligation to pay all Rent and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this instrument against the undersigned Tenant, any Guarantor and/or any assignee without demand upon or proceeding in any way against any other person. Neither the consent by Landlord to any assignment, transfer, encumbrance or subletting nor the collection or acceptance by Landlord of rent from any assignee, subtenant or occupant shall be construed as a waiver or release of the initial Tenant or any Guarantor from the terms and conditions of this Lease or relieve Tenant or any subtenant, assignee or other party from obtaining the consent in writing of Landlord to any further assignment, transfer, encumbrance or subletting.

(iv) Tenant hereby assigns to Landlord the rent and other sums due from any subtenant, assignee or other occupant of the Premises and hereby authorizes and directs each such subtenant, assignee or other occupant to pay such rent or other sums directly to Landlord; provided however, that until the occurrence of an Event of Default, Tenant shall have the license to continue collecting such rent and other sums. Notwithstanding the foregoing, in the event that the rent due and payable by a sublessee under any such permitted sublease (or a combination of the rent payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the hereinabove provided Rent payable under this Lease, or if with respect to a permitted assignment, permitted license, or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee, or other transferee exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord, in accordance with Section 10.3, the Net Profits (as defined in Section 10.3) and any other excess consideration within 10 days following receipt thereof by Tenant from such sublessee, assignee, licensee, or other transferee, as the case may be.

(v) Tenant shall pay Landlord a fee in the amount of $3,000.00 to reimburse Landlord for its legal and administrative expenses under this Article X, in connection with any review of, and Landlord’s consent to, any sublease, assignment or deemed assignment made under this Article X, regardless of whether Landlord’s consent is required under this Article X and whether Landlord consents to such request.

10.2 Landlord’s Option to Recapture Premises. Subject to Sections 10.4 and 10.5, if Tenant proposes to assign this Lease, Landlord may, at its option, upon written notice to Tenant given within 10 business days after its receipt of Tenant’s notice of proposed assignment, together with all other necessary information, elect to recapture the Premises and terminate this Lease. If Tenant proposes to sublease for the entire remainder of the Term the entire First Floor Premises,
the entire Fifth Floor Premises, the entire Sixth Floor Premises, or any combination thereof, then Landlord may, at its option upon written notice to Tenant given within 10 business days after its receipt of Tenant’s notice of proposed subletting, together with all other necessary information as outlined in Section 10.1, elect to recapture such portion of the Premises as Tenant proposes to sublease and upon such election by Landlord, this Lease shall terminate as to the portion of the Premises recaptured, with such date of termination being the earlier of the proposed date of sublease or assignment or 30 days after Landlord provides notice of recapture to Tenant. If a portion of the Premises is recaptured, the Rent payable under this Lease shall be proportionately reduced based on the square footage of the Rentable Square Feet retained by Tenant and the square footage of the Rentable Square Feet leased by Tenant immediately prior to such recapture and termination, and Landlord and Tenant shall thereupon execute an amendment to this Lease in accordance therewith. Landlord may thereafter, without limitation, lease the recaptured portion of the Premises to the proposed assignee or subtenant without liability to Tenant. Upon any such termination, Landlord and Tenant shall have no further obligations or liabilities to each other under this Lease with respect to the recaptured portion of the Premises, except with respect to obligations or liabilities which accrue or have accrued hereunder as of the date of such termination (in the same manner as if the date of such termination were the date originally fixed for the expiration of the Term).

10.3 Distribution of Net Profits. In the event that Tenant assigns this Lease or sublets all or any portion of the Premises during the Term, Landlord shall receive 50% of any “Net Profits” (as hereinafter defined) and Tenant shall receive 50% of any Net Profits received by Tenant from any such assignment or subletting. The term “Net Profits” as used herein shall mean such portion of the Rent payable by such assignee or subtenant in excess of the Rent payable by Tenant under this Lease (or pro rata portion thereof in the event of a subletting) for the corresponding period, after deducting from such excess Rent all of Tenant’s documented reasonable third party costs associated with such assignment or subletting, including, without limitation, broker commissions, attorney fees, any costs incurred by Tenant to prepare or alter the Premises, or portion thereof, for the assignee or sublessee and any free rent periods, reduced rent periods, improvements allowances, moving allowances or other market economic concessions granted by Tenant in the applicable assignment or sublease.

10.4 Transfers to Related Entities. Notwithstanding anything in this Article X to the contrary, provided no Event of Default exists under this Lease or would exist but for the pendency of any cure periods provided for under Section 20.1, Tenant may, without Landlord’s consent, but after providing written notice to Landlord and subject to the provisions of Section 10.1(b)(i-v), assign this Lease or sublet all or any portion of the Premises to any Related Entity (as hereinafter defined) provided that (a) such Related Entity is not a governmental entity or agency; (b) such Related Entity’s use of the Premises would not cause Landlord to be in violation of any exclusivity agreement within the Project; and (c) with respect to an assignment of this Lease to a Related Entity, such Related Entity as of the date of such assignment meets or exceeds the Minimum Credit Standards (as defined in Section 10.6) and proof satisfactory to Landlord that such Minimum Credit Standards have been met shall be delivered to Landlord at least 10 days prior to the effective date of any such transfer. “Related Entity” shall be defined as (i) any parent company, subsidiary, affiliate or related corporate entity of Tenant that controls, is controlled by, or is under common control with Tenant or (ii) the assignee of Tenant’s interest under this Lease as part of the sale of all or substantially all of Tenant’s assets to such assignee in one or more transactions.
10.5 Transfers of Ownership. Notwithstanding anything in this Article X to the contrary, unless an Event of Default exists under this Lease or Landlord has delivered notice to Tenant of a default and an Event of Default would exist if such default remains uncured after the pendency of any cure periods provided for under Section 20.1, Tenant may, without Landlord’s consent, but after providing at least 10 days’ prior notice to Landlord and subject to the provisions of Section 10.1(b)(i-iii) and (v), transfer a majority interest in Tenant in one or more transactions in connection with a merger, consolidation, sale of all or substantially all of the equity interests in Tenant, or reorganization (“Ownership Transfer”) (as long as such transfer is not used solely to circumvent the obligation to obtain Landlord’s consent pursuant to this Article X), provided that the Tenant after each such Ownership Transfer meets or exceeds the Minimum Credit Standards and proof reasonably satisfactory to Landlord that such Minimum Credit Standards have been met shall have been delivered to Landlord at least 10 days prior to the effective date of any such transaction.

10.6 Minimum Credit Standards. As used in this Lease, the “Minimum Credit Standards” mean the Tenant or Related Entity, as applicable based upon the provision to which the requirement applies, (a) has annual earnings before interest, tax, depreciation and amortization as adjusted consistent with Tenant’s then existing credit agreement (“EBITDA”) in excess of $600,000,000; and (b) either (i) has a credit rating of “B” or greater issued by Standard & Poor’s Financial Services LLC ("S&P") or if S&P ceases issuing credit ratings, then an equivalent credit rating issued by a nationally recognized credit rating firm reasonably acceptable to Landlord; or (ii) has a credit rating of “B2” or greater issued by Moody’s Investors Service ("Moody’s") or if Moody’s ceases issuing credit ratings, then an equivalent credit rating issued by a nationally recognized credit rating firm reasonably acceptable to Landlord; provided, however, if such credit rating is not available as required in the foregoing clauses (i) and (ii) because the then Tenant or the Related Entity, as applicable, has not issued debt, then Tenant or the Related Entity, as applicable (A) has tangible assets (computed in accordance with generally accepted accounting principles exclusive of goodwill) greater than or equal to $900,000,000; and (B) has a tangible net worth (computed in accordance with generally accepted accounting principles exclusive of goodwill) greater than or equal to $900,000,000; and (B) has a tangible net worth (computed in accordance with generally accepted accounting principles exclusive of goodwill) greater than or equal to $1.00.

XI. MAINTENANCE AND REPAIR

11.1 Landlord’s Obligation. Landlord will cause to be maintained, repaired and restored in reasonably good order and condition (i) the Common Area, including, without limitation, the Parking Facilities serving the Building, landscaping, walkways and exterior lighting; (ii) the mechanical, plumbing, electrical and HVAC equipment serving the Building; (iii) the structure of the Building (including roof, exterior walls and foundation); (iv) exterior windows of the Building; and (v) Building standard lighting, except for Lightning Maintenance, which is governed by Section 11.2. Except as otherwise provided in Section 6.2, Section 9.2, Section 9.3, or Section 11.2, the cost of such maintenance, repairs, replacements and restorations shall be included in the Operating Expenses and paid by Tenant as provided in Article VI; provided, however, subject to the waivers in Section 15.5, Tenant shall bear the full cost, plus 5% of such cost for Landlord’s overhead, of any maintenance, repair, replacements or restoration to the extent necessitated by the negligence or willful misconduct of Tenant or its Agents’ or that is necessitated in connection with the Dog Visitation Policy (as defined in Exhibit C-1), including, without limitation, carpet cleaning, excrement removal, painting, wall repair, floor care and landscape.
repair and replacement. Tenant acknowledges that Landlord shall not be obligated to provide any of the services that Tenant is responsible for providing under Section 16.1. Tenant waives all rights to make repairs at the expense of Landlord, to deduct the cost of such repairs from any payment owed to Landlord under this Lease or to vacate the Premises or terminate this Lease whether under California Civil Code Section 1942 or any other law. Tenant further waives the provisions of California Civil Code Section 1932 with respect to Landlord’s obligations under this Lease.

11.2 Tenant’s Obligation. Subject to Landlord’s express obligations set forth in Section 11.1, Tenant, at its expense, shall maintain the Premises in good condition and repair, reasonable wear and tear and casualty governed by the provisions of Article XIX excepted. Tenant’s obligation shall include without limitation the obligation to provide in a first-class manner consistent with the first-class nature of the Building and Project (i) janitorial services and pest control for the Premises using contractors approved by Landlord pursuant to service contracts approved by Landlord and (ii) maintain, repair and replace all (A) interior windows and walls; (B) floor coverings; (C) ceilings; (D) doors; (E) entrances to the Premises; (F) supplemental HVAC systems within or serving the Premises, including, without limitation, any Rooftop Installations (as defined in Section 16.7); (G) private restrooms and kitchens, including hot water heaters, plumbing and similar facilities serving Tenant exclusively; and (H) all light bulbs, lamps, starters and ballasts for lighting fixtures within the Premises (“Lighting Maintenance”) using contractors approved by Landlord pursuant to service contracts approved by Landlord; provided that, Landlord shall have the right to contract directly, subject to reimbursement by Tenant of the associated cost and expense as provided in Section 16.4, for such Lighting Maintenance. Landlord may establish reasonable measures to conserve energy and water. Landlord shall have the right to inspect the Premises for compliance with this Section 11.2(a) in accordance with Article XIV and to require Tenant to provide additional cleaning, if necessary. Tenant will promptly advise Landlord of any damage to the Premises. All damage or injury to the Premises (excluding Tenant’s equipment, personal property and trade fixtures) may be repaired, restored or replaced by Landlord, at the expense of Tenant, and such expense (plus 10% of such expense for Landlord’s overhead) will be collectible as Additional Rent and will be paid by Tenant upon demand. If Tenant fails to provide or perform any of the services or maintenance required to be provided or performed by Tenant for more than five (5) business days after notice from Landlord or if Tenant fails to make any repairs to the Premises for more than 30 days after notice from Landlord (although notice shall not be required in the event of an emergency as defined in Article XIV), Landlord may, at its option, cause all required services, maintenance, repairs, restorations or replacements to be made and Tenant shall pay Landlord pursuant to this Section 11.2(a).

XII. INITIAL CONSTRUCTION: ALTERATIONS

12.1 Initial Construction. Landlord and Tenant agree that the construction of any “Tenant Work” shall be performed by Tenant in accordance with and as defined in Exhibit B-1. Subject to the funding the Tenant Work Allowance (as defined in Exhibit B-1) for the construction of the Tenant Work, Landlord shall have no obligations whatsoever to construct any improvements to the Premises and Tenant accepts the Premises “AS IS”, “WHERE IS” and “WITH ANY AND ALL FAULTS”, and Landlord neither makes nor has made any representations or warranties, express or implied, with respect to the quality, suitability or fitness thereof of the Premises, or the condition or repair thereof. Tenant taking possession of the Premises shall

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be conclusive evidence for all purposes of Tenant’s acceptance of the Premises in good order and satisfactory condition, and in a state and
condition satisfactory, acceptable and suitable for Tenant’s use pursuant to this Lease. Notwithstanding the foregoing, Landlord shall deliver all
structural elements and subsystems of the Premises, including but not limited to the HVAC, mechanical, electrical, and plumbing systems serving the
Premises, in good working condition and repair as of the Date of Lease and Landlord will be responsible, without cost to Tenant, to repair any latent
structural or design defects in, the curtain wall, windows and window framing, interior structural framing, foundation, roof, HVAC systems, mechanical,
electrical, and plumbing systems occurring or discovered prior to the later of the date that is 12 months after the Date of Lease and the date of expiration
of any applicable warranty therefor; provided that Tenant delivers notice to Landlord thereof prior to the later of the date that is 12 months after Date of
Lease and date of expiration of any applicable warranty therefor.

12.2 Installing and Operating Tenant’s Equipment. Without first obtaining the written consent of Landlord, which consent shall not be
unreasonably withheld, conditioned, or delayed, Tenant shall not install or operate in the Premises (i) any electrically operated equipment or other
machinery, other than standard office equipment that does not require wiring, cooling or other service in excess of Building standards; (ii) any
equipment of any kind or nature whatsoever which will require any changes, replacements or additions to, or changes in the use of, any water, heating,
plumbing, air conditioning or electrical system of the Premises or the Project; or (iii) any equipment which exceeds the electrical or floor load capacity
per square foot for the Building. Landlord’s consent to such installation or operation may be conditioned upon the payment by Tenant of additional
compensation for any excess consumption of utilities and any additional power, wiring, cooling or other service that may result from such equipment.
Machines and equipment which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein so as to be
objectionable to Landlord or any other Project tenant shall be installed and maintained by Tenant, at its expense, on vibration eliminators or other
devices sufficient to eliminate such noise and vibration. Tenant and Tenant’s telecommunications companies, including but not limited to, local
exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to the Land, Building or the
Project for the installation and operation of telecommunications systems, including but not limited to, voice, video, data, and any other
telecommunications services provided over wire, fiber optic, microwave, wireless, and any other transmission systems, for part or all of Tenant’s
telecommunications within the Building without Landlord’s prior written consent, such consent not to be unreasonably withheld.

12.3 Alterations. Other than Minor Changes (as defined in this Section 12.3), Tenant shall not make or permit any alterations, decorations,
additions or improvements of any kind or nature to the Premises or the Project, whether structural or nonstructural, interior, exterior or otherwise
("Alterations") without the prior written consent of Landlord, said consent not to be unreasonably withheld or delayed. Other than for Minor Changes,
Landlord may impose any reasonable conditions to its consent, including, without limitation: (i) prior approval of the plans and specifications and
contractor(s) with respect to the Alterations (provided that Landlord may designate specific contractors with respect to Building systems); (ii)
supervision by Landlord’s representative, at Tenant’s expense, of the Alterations; (iii) proof of worker’s compensation insurance and commercial general
liability insurance in such amounts and meeting such requirements as reasonably requested by Landlord; (iv) delivery to Landlord of written and
unconditional waivers of mechanic’s and materialmen’s liens as to the Project for all work, labor and services to be performed and materials to be furnished, signed by all contractors, subcontractors, materialmen and laborers participating in the Alterations; (v) delivery of permits, certificates of occupancy, “as-built” plans, and equipment manuals; and (vi) any security for performance or payment that is reasonably required by Landlord. The Alterations shall conform to Landlord’s Specifications (as defined in Exhibit B-1) and set forth in Exhibit B-3 attached hereto and made a part hereof and the requirements of federal, state and local governments having jurisdiction over the Premises, including, without limitation, the ADA, the California ADA, the OSHA General Industry Standard (29 C.F.R. Section 1910.1001, et seq.), and the OSHA Construction Standard (29 C.F.R. Section 1926.1001, et seq.) and shall be performed in accordance with the terms and provisions of this Lease and all warranties in effect and in a good and workmanlike manner using material of a quality that is at least equal to the quality designated by Landlord as the minimum standard for the Building. Any deviations from Landlord’s Specifications with respect to Alterations and any Alterations comprised of light fixtures, entry doors, interior doors, HVAC diffusers or demountable walls shall be subject to Landlord’s approval in its sole discretion. Provided that Tenant gives Landlord notice of each proposed Alteration at least five (5) business days prior to commencing such Alteration and complies with all of the provisions of this Section 12.3, Tenant shall not be required to obtain Landlord’s consent for Alterations that meet the following requirements (“Minor Changes”): (a) do not affect the other tenants of the Building, any of the Building’s mechanical, electrical, plumbing, HVAC or fire, life safety systems or the roof, foundations, exterior walls or structural portions of the Building, (b) are not visible from the Common Areas or the exterior of the Building, (c) do not affect the architectural or structural integrity of the Building, including, without limitation, the water tight character of the Building or its roof, (d) do not require a building permit, (e) do not move any interior walls or otherwise change the layout of the Building, (f) the Alteration, together with any other Alterations, does not exceed a cost of $250,000 in any one Calendar Year (provided that Tenant shall not perform such Alterations in stages in order to subvert this provision), (g) do not materially or negatively impact the future marketability of the Building or increase the Building’s assessed value for tax purposes; (h) do not require any other alteration, addition, or improvement to be performed in or made to any other portion of the Project other than the Premises and (i) do not include deviations from the Specifications or any light fixtures, entry doors, interior doors, HVAC diffusers or demountable walls. All computer, telecommunications or other cabling, wiring and associated appurtenances (collectively, “Cabling”) installed by Tenant inside any of the interior walls of the Premises, above the ceiling of the Premises, in any portion of the ceiling plenum above or below the Premises, or in any portion of the Common Areas of the Project, including but not limited to any of the shafts or utility rooms of the Building, shall be clearly labeled or otherwise identified as having been installed by Tenant. All Cabling installed by Tenant shall comply with the requirements of the National Electric Code and any other applicable fire and safety codes. Landlord may designate reasonable rules, regulations and procedures for the performance of work in the Building and, to the extent reasonably necessary to avoid disruption to the occupants of the Project, shall have the right to designate the time when Alterations may be performed. If the Alterations are not performed as herein required, Landlord shall have the right, at Landlord’s option, to halt any further Alterations, or to require Tenant to perform the Alterations as herein required or to require Tenant to return the Premises to its condition before such Alterations. All or any part of the Alterations, whether made with or without the consent of Landlord, shall, at the election of Landlord, either be removed by Tenant at its expense before the
expiration of the Term or shall remain upon the Premises and be surrendered therewith at the Expiration Date or earlier termination of this Lease as the property of Landlord without disturbance, molestation or injury; provided, Tenant shall remove all Cabling installed by Tenant anywhere in the Premises, the Building or the Project to the point of the origin of such Cabling, unless Landlord consents, in its sole discretion, to a request by Tenant not to remove such Cabling. If requested by Tenant, Landlord’s election shall be made at the time Landlord approves installation of such Alterations or if the Alterations are Minor Changes, then Landlord shall make such election within 30 days after Tenant’s notice of the Minor Changes if requested by Tenant at the time that Tenant provided notice of its intention to install such Minor Changes. Landlord will not unreasonably require removal of Alterations at the end of the Term such as by requiring removal of Alterations that are not specialized to Tenant’s use of the Building, do not materially and negatively impact the Building’s structure or systems or the future marketability of the Building are not visible from the Common Areas or the exterior of the Building and are consistent with use of the Premises as a class A office building. If Landlord requires the removal of all or part of the Alterations, Tenant, at its expense, shall repair any damage to the Premises or the Project caused by such removal and restore the Premises and the Project to its condition prior to the construction of such Alterations, reasonable wear and tear excepted. If Tenant fails to remove the Alterations upon Landlord’s request and repair and restore the Premises and Project, then Landlord may (but shall not be obligated to) remove, repair and restore the same and the cost of such removal, repair and restoration together with any and all damages which Landlord may suffer and sustain by reason of the failure of Tenant to remove, repair and restore the same, shall be charged to Tenant and paid upon demand. Notwithstanding the foregoing, Tenant may remove any trade fixtures, business equipment, personal property and furniture and Tenant repairs any damage to the Premises resulting from the removal of such items and restores the Premises to its condition prior to the installation of such items, reasonable wear and tear excepted.

12.4 **Mechanics’ Liens.** Tenant will pay or cause to be paid all costs and charges for: (i) work done by Tenant or caused to be done by Tenant, in or to the Premises; and (ii) materials furnished for or in connection with such work. **Tenant will indemnify Landlord against and hold Landlord, the Premises, and the Project free, clear and harmless from and against, all mechanics’ and materialmen’s stop notices, liens and claims of liens (collectively, “Liens”), and all other liabilities, liens, claims, and demands on account of such work by or on behalf of Tenant.** If any such Lien, at any time, is filed against the Premises, or any part of the Project, Tenant will cause such Lien to be discharged of record within 30 days after the date Tenant receives notice of the filing of such Lien, either by resolving the matter and causing a release to be recorded in the Official Records of the County in which the Project is located, or by recording a mechanic’s lien release bond in accordance with the provisions of Civil Code Section 8424. If Tenant fails to timely cause the Lien to be removed as described above, Landlord may, at its option, pay to the claimant all amounts necessary to discharge the Lien, regardless of the validity or enforceability of the claim, together with any related costs and interest, and the amount so paid, together with attorneys’ fees incurred in connection with such Lien, will be immediately due from Tenant to Landlord as Additional Rent. Nothing contained in this Lease will be deemed the consent or agreement of Landlord to subject Landlord’s interest in all or any portion of the Project to liability under any Lien or to any other lien law. If Tenant receives notice that a Lien has been or is about to be filed against the Premises or any part of the Project, or that any action affecting title to the Project has been commenced to enforce a Lien or otherwise on account of work done by or for or materials furnished to or for Tenant, it will immediately give Landlord written notice.
of such notice. At least 15 days prior to the commencement of any work (including, but not limited to, any maintenance, repairs or Alterations) in or to the Premises, by or for Tenant or any party claiming through Tenant, Tenant will give Landlord written notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Landlord will have the right to post notices of non-responsibility or similar notices, if applicable, on the Premises or in the public records in order to protect the Premises and Project against such Liens.

XIII. SIGNS

Except as expressly provided for in this Article XIII, no sign, advertisement or notice shall be inscribed, painted, affixed, placed or otherwise displayed by Tenant on any part of the Project or the outside or the inside of the Building or the Premises (to the extent visible from the exterior of the Premises or the Building). Landlord shall provide, at Tenant’s expense, a listing on the directory in the lobby of the Building listing all Building tenants. Landlord also shall, at Tenant’s expense, place the suite number and/or Tenant name on or in the immediate vicinity of the entry door to the First Floor Premises using Building standard sign material and lettering. Landlord shall, at Tenant’s expense, (a) place nonexclusive signage (“Project Monument Signage”) on the future monument sign of the Project (the “Project Monument Sign”) at the bottom position on Project Monument Sign or the fourth (4th) position from the top on the Project Monument Sign, whichever is higher, subject to approval by the City of San Jose; and (b) place non-exclusive signage (“Building Monument Signage”) on the existing monument sign (“Building Monument Sign”) adjacent to the Building at an available right top position. Tenant shall, at Tenant’s sole cost and expense, and subject to the terms of this Article XIII, have the nonexclusive right to display exterior building top signage in the one (1) location on the Building exterior (“Building Signage”) identified on Exhibit H-1 attached hereto and incorporated herein. Tenant’s right to display the Building Signage is further conditioned on Tenant’s installation and maintenance of such Building Signage in a good and workmanlike manner by contractors approved by Landlord and otherwise in accordance with the same terms that apply to Alterations. All Project Monument Signage, Building Monument Signage and Building Signage (collectively, the “Tenant Signage”) shall contain only the name and logo of MCAFEE, LLC (unless Landlord grants consent to another name and logo, in its sole discretion) and shall be subject to Landlord’s approval, in its sole discretion, as to consistency in appearance with other tenant signage on the Project Monument Sign, Building Monument Sign and the Other Buildings, location, lettering, design, material, size, lighting, logo and color scheme prior to fabrication and installation; provided that Landlord has approved the representative lettering, design, material, size, lighting, logo and color scheme shown for the Building Signage on Exhibit H-2 attached hereto. Accordingly, Tenant shall submit a signage plan to Landlord detailing the design and specifications of all such Tenant Signage. In no event shall any Tenant Signage displayed by Tenant interfere with the visibility of the Building or the Other Buildings. All Tenant Signage must conform to all applicable recorded covenants, conditions and restrictions, zoning and other applicable laws, ordinances and governmental requirements, and the Project’s design signage and graphics program, including, without limitation the Exterior Master Sign Program approved by the City of San Jose attached as Exhibit H and incorporated herein, and Tenant shall obtain all required approvals of third parties, if any. Landlord shall be responsible for the maintenance of the Project Monument Signage, Building Monument Signage, the Project Monument Sign and the Building Monument Sign in good condition and repair; provided that Tenant shall reimburse Landlord for Tenant’s pro rata share of the costs and expenses associated with such maintenance of (i) the Project Monument Signage and
the Project Monument Sign, which pro rata share shall be the percentage amount equal to the number of square feet of area on the Project Monument Sign that is occupied by the Project Monument Signage divided by the total number of square feet of area on the Project Monument Sign then occupied by monument signage displaying the names of any occupants of the Project and multiplying the resulting quotient by one hundred and rounding to the second decimal place; and (ii) the Building Monument Signage and the Building Monument Sign, which pro rata share shall be the percentage amount equal to the number of square feet of area on the Building Monument Sign that is occupied by the Building Monument Signage divided by the total number of square feet of area on the Building Monument Sign then occupied by monument signage displaying the names of any occupants of the Building and multiplying the resulting quotient by one hundred and rounding to the second decimal place. Upon the expiration or earlier termination of this Lease or the occurrence of a Signage Revocation Condition (as defined in this Article XIII), Landlord shall have the right to remove, at Landlord’s option, the Tenant Signage, and repair the affected portions of the Project Monument Sign, Building Monument Sign and Building, as applicable, to the condition as it existed prior to installation of the Tenant Signage, reasonable wear and tear and casualty damage excepted, all at Tenant’s sole cost and expense, for which Tenant shall reimburse Landlord the cost and expense incurred for the same upon demand. Tenant’s right to display the Tenant Signage under this Article XIII shall be personal to MCAFEE, LLC, a Delaware limited liability company and either a Related Entity to whom this Lease is assigned in accordance with Section 10.4 or an assignee to whom this Lease is assigned pursuant to an Ownership Transfer made in accordance with Article XIII without consent of Landlord provided, however, that if Landlord grants its consent to Tenant’s Signage Assignment (as defined in this Article XII), which may be withheld in Landlord’s sole discretion, MCAFEE, LLC, a Delaware limited liability company may assign its rights to the Tenant Signage under this Article XIII (“Tenant’s Signage Assignment”) to its assignee of this Lease or its subtenant of the entire Premises pursuant to an assignment or sublease, as applicable, made with Landlord’s consent in accordance with Section 10.1 (“Permitted Transferee”). As used in this Article XIII, a “Signage Revocation Condition” means one or more of the following: (i) Landlord terminates this Lease or Tenant’s right to possession of the Premises upon the occurrence of an Event of Default; (ii) the entire Fifth & Sixth Floor Premises ceases to be occupied by MCAFEE, LLC, a Delaware limited liability company, or its Related Entity pursuant to an assignment or sublease made in accordance with Section 10.4; (iii) Tenant terminates this Lease prior to the Expiration Date; or (iv) MCAFEE, LLC, a Delaware limited liability company assigns this Lease or sublets any portion of the Fifth & Sixth Floor Premises other than to its Related Entity pursuant to an assignment or sublease made in accordance with Section 10.4 or its assignee pursuant to an Ownership Transfer made in accordance with Article XIII. If any prohibited sign, advertisement or notice is nevertheless exhibited by Tenant, Landlord shall have the right to remove the same, and Tenant shall pay upon demand any and all expenses incurred by Landlord in such removal, together with interest thereon at the Default Rate from the demand date.

XIV. RIGHT OF ENTRY

Tenant shall permit Landlord or its Agents to enter the Premises without charge therefor to Landlord and without diminution of Rent or claim of constructive eviction: (i) to clean, inspect and protect the Premises and the Project and to satisfy Landlord’s obligations under this Lease, the
Declaration or applicable laws, ordinances or governmental requirements; (ii) to make such alterations and repairs to the Premises or any portion of the Building, including other tenants’ premises, which Landlord determines to be reasonably necessary; (iii) to exhibit the same to prospective purchaser(s) of the Building or the Project or to present or future Mortgagees; or (iv) to exhibit the same to prospective tenants during the last 12 months of the Term. Landlord will endeavor to minimize, as reasonably practicable, any interference with Tenant’s business and shall provide Tenant with at least 24 hours’ prior notice of entry into the Premises (which may be given verbally or by e-mail), except in the event of an apparent emergency condition arising within or affecting the Premises that endangers or threatens to endanger property or the safety of individuals (an “Emergency”). Except in the case of Emergency, as a condition to Landlord’s entry into the Premises: (i) Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the Premises, if such representative is reasonably made available to Landlord; (ii) Landlord and its Agents shall reasonably cooperate with Tenant’s commercially reasonable security protocols in connection with entry into the Premises, so long as the same have been delivered to Landlord in writing prior to such entry and so long as any such protocols that are ongoing and capable of remaining in place for future entry do not have to be repeated in connection with Landlord’s subsequent entry; and (iii) Tenant may limit Landlord and its Agents from accessing sensitive or secured areas of the Premises reasonably designated as to size and location in advance by Tenant, unless such limitation would prevent Landlord from satisfying its obligations under this Lease, the Declaration or applicable laws, ordinances or governmental requirements.

XV. INSURANCE

15.1 Certain Insurance Risks. Tenant will not do or permit to be done any act or thing upon the Premises or the Project which would: (i) jeopardize or be in conflict with fire insurance policies covering the Project, and fixtures and property in the Project; or (ii) increase the rate of fire insurance applicable to the Project to an amount higher than it otherwise would be for general office use of the Project; or (iii) subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being conducted upon the Premises.

15.2 Landlord’s Insurance. At all times during the Term, Landlord will carry and maintain with reputable insurers:

(a) Fire and extended coverage insurance covering the Building, its equipment and common area furnishings, and leasehold improvements in the Premises to the extent of any initial build out of the Premises by Landlord (excluding the Tenant Work and any Alterations) in an amount equal to the full replacement cost thereof;

(b) Bodily injury and property damage insurance; and

(c) Such other insurance as Landlord reasonably determines from time to time but generally consistent with the types and amounts of insurance carried by prudent owners of comparable buildings in the San Jose, California area.
The insurance coverages and amounts in this Section 15.2 will be determined by Landlord in the exercise of its reasonable discretion.

15.3 Tenant’s Insurance. On or before the earlier to occur of (i) the Commencement Date or (ii) the date Tenant commences any work of any type in the Premises pursuant to this Lease (which may be prior to the Commencement Date) and continuing throughout the Term, Tenant will carry and maintain, at Tenant’s expense, the following insurance, in the minimum amounts specified below or such other amounts as Landlord may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to Landlord:

(a) Commercial general liability insurance, with a combined single occurrence limit and aggregate of not less than $1,000,000. All such insurance will be on an occurrence ISO form including without limitation, bodily injury, property damage, personal injury, advertising injury, products and completed operations liability, contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in this Lease and must include coverage for any claims arising from any dogs brought onto the Project by any of Tenant’s Agents;

(b) A policy of cause of loss-specialty property insurance coverage at least equal to ISO Special Form Causes of Loss and covering all of Tenant’s furniture and fixtures, machinery, equipment, stock and any other personal property owned and used in Tenant’s business and found in, on or about the Project, and any leasehold improvements to the Premises in excess of any initial buildout of the Premises by Landlord, in an amount not less than the full replacement cost;

(c) Worker’s compensation insurance insuring against and satisfying Tenant’s obligations and liabilities under the worker’s compensation laws of the state in which the Premises are located, including employer’s liability insurance in the limit of $1,000,000 aggregate;

(d) If Tenant operates owned, hired, or non-owned vehicles on the Project, comprehensive automobile liability will be carried at a limit of liability not less than $1,000,000 combined bodily injury and property damage;

(e) Umbrella liability insurance in excess of the underlying coverage listed in paragraphs (a), (c), and (d) above, with limits of not less than $4,000,000 per occurrence/$4,000,000 aggregate;

(f) Intentionally Deleted; and

(g) All insurance required under this Section 15.3 shall be issued by such good and reputable insurance companies qualified to do and doing business in the state in which the Premises are located and having a policyholder rating of not less than “A” and a financial rating of “VIII” in the most current copy of Best’s Insurance Report in the form customary to this locality.

15.4 Forms of the Policies. Landlord and its affiliates, Landlord’s management company, Landlord’s Mortgagee (as defined in Article XXI), and such other parties as Landlord shall designate to Tenant who have an insurable interest in the Premises or Project shall: (i) be named as additional insureds with respect to the coverages provided for under Section 15.3(a), (d) and (e), (ii) have waiver of subrogation rights with respect to the coverages provided for under
Section 15.3 (a), (c), (d) and (e), and (ii) be named as loss payees as their interest may appear with respect to the coverage provided under Section 15.3 (b). Certificates of insurance together with any endorsements providing the required coverage will be delivered to Landlord prior to Tenant’s occupancy of the Premises and from time to time, as applicable, not more than 15 days after renewal (or replacement) after expiration of the term, not more than 15 days after material change or reduction in coverage, or not less than 15 days prior to cancellation or other termination thereof. All commercial general liability and property policies (including any umbrella policies in excess of such policies) herein required to be maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. Commercial general liability insurance required to be maintained by Tenant by this Article XV will not be subject to a deductible or any self-insured retention in excess of $1,000,000.00.

15.5 Waiver of Subrogation. Landlord and Tenant each releases, discharges and waives and shall cause their respective insurance carriers to waive any and all rights to recover against the other or against the Agents of such other party and, in the case of Tenant’s waiver, Landlord’s affiliates, management company, and Mortgagee, for any loss or damage to such waiving party (including deductible amounts and self-insured retention) arising from any cause covered by any property insurance required to be carried by such party pursuant to this Article XV or any other property insurance actually carried by such party to the extent of the limits of such policy. Tenant agrees to cause all other occupants of the Premises claiming by, under or through Tenant, to execute and deliver to Landlord and its affiliates, Landlord’s management company, and Landlord’s Mortgagee such a release, discharge and waiver of claims and to obtain such waiver of subrogation rights endorsements.

15.6 Adequacy of Coverage. Landlord makes no representation that the limits of liability specified to be carried by Tenant pursuant to this Article XV are adequate to protect Tenant and Tenant should obtain such additional insurance or increased liability limits as Tenant deems appropriate. Furthermore, in no way does the insurance required herein limit the liability of Tenant assumed elsewhere in this Lease.

XVI. SERVICES AND UTILITIES

16.1 Ordinary Services to the Premises. Landlord shall furnish to the Premises throughout the Term so long as the Premises are occupied: (i) heating, ventilation, and air conditioning (“HVAC”) appropriate for the Permitted Use during Normal Business Hours (as defined in the Rules and Regulations), except for legal holidays observed by the federal government; (ii) trash removal from the Premises; (iii) reasonable use of all existing basic intra-Building and/or Project telephone and network cabling; (iv) hot and cold water from points of supply; (v) Common Area restrooms; (vi) elevator service, provided that Landlord shall have the right to remove such elevators from service as may reasonably be required for moving freight or for servicing or maintaining the elevators or the Building, provided, further that at all times at least two elevators will be operational and available for use by Tenant; and (vii) proper facilities to furnish sufficient electrical power for Building standard lighting, facsimile machines, personal computers, printers, copiers and other customary business equipment, but not including electricity and air conditioning units required for equipment of Tenant that is in excess of Building standard. The cost of all services provided by Landlord hereunder shall be included within Operating Expenses, unless charged directly (and not as a part of Operating Expenses) to Tenant or another tenant of the Project. Landlord may establish reasonable measures to conserve energy and water.
16.2 Additional Services. Should Tenant desire, or Landlord determine it necessary to provide, any additional services beyond those described in Section 16.1, or a rendition of any of such services outside the normal times for providing such service or in excess of standard services, including, without limitation, excess janitorial or pest control services in connection with Tenant’s exercise of its rights under the Dog Visitation Policy, Landlord may (at Landlord’s option), upon reasonable advance notice from Tenant to Landlord, furnish such services, and Tenant agrees to pay Landlord upon demand Landlord’s additional documented expenses resulting therefrom. Landlord may, from time to time during the Term, set a charge for such additional services, or a per hour charge for additional or after hours service which shall include the utility, service, labor, and administrative costs and a cost for depreciation of the equipment used to provide such additional or after hours service.

16.3 Interruption of Services. Landlord will not be liable to Tenant or any other person for direct or consequential damages (including, without limitation, damages to persons or property or for injury to, or interruption of, business), Tenant shall not be entitled to any abatement or reduction of rent except as expressly set forth in this Section 16.3, nor shall a constructive eviction exist or shall Tenant be released from any of Tenant’s obligations under this Lease: (i) for any failure to supply any heat, air conditioning, elevator, cleaning, lighting or security or for any surges or interruptions of electricity, telecommunications or other service Landlord has agreed to supply during any period when Landlord uses reasonable diligence to supply such services; (ii) as a result of the admission to or exclusion from the Building or Project of any person; or (iii) for any discontinuance permitted under this Article XVI. Landlord reserves the right temporarily to discontinue the services set forth in the foregoing sentence, or any of them, at such times as may be necessary by reason of accident, repairs, alterations or improvement, strikes, lockouts, riots, acts of God, governmental preemption in connection with a national or local emergency, any rule, order or regulation of any governmental agency, conditions of supply and demand which make any product unavailable, Landlord’s compliance with any mandatory or voluntary governmental energy conservation or environmental protection program, or any other happening beyond the control of Landlord. In the event of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord’s reasonable opinion, Landlord will have the right to prevent access to the Building or Project during the continuance of the same by such means as Landlord, in its reasonable discretion may deem appropriate, including, without limitation, locking doors and closing Parking Facilities and the Common Areas. Notwithstanding the foregoing, in the event of any failure to furnish, or any stoppage of, the specified services set forth in this Section 16.3 for a period in excess of five consecutive days, and if: (a) such interruption is restricted to the Building and is not a neighborhood blackout or caused by an Event of Force Majeure; (b) such failure to furnish or stoppage is caused by the negligence or willful misconduct of Landlord or by the failure of Landlord to commence and diligently pursue repairs for which Landlord is responsible under this Lease; (c) such interruption results in the Premises, or any portion thereof in excess of 25% of the Rentable Square Feet of the Premises, becoming untenable; and (d) Tenant actually ceases to occupy the Premises, or any untenable portion of the Premises, as a result thereof, Tenant shall be entitled to an abatement of Rent in proportion to the area rendered untenable and that is unoccupied, which abatement shall commence on the sixth day (and shall not be retroactive) and shall continue for the remainder of the period of such
failure to furnish or stoppage of such specified services. As used in this Section 16.3, the specified services are electricity, water, natural gas and sewer service. If Tenant vacates the entire Premises due to such failure to furnish or stoppage of such specified services and more than fifty percent (50%) of the Premises is untenantable in a manner that allows Tenant to abate Rent under this Section 16.3, (1) Tenant will be entitled to deem one hundred percent (100%) of the Premises to be untenantable and (2) if such conditions that permit Rent abatement described in this Section 16.3 for such failure continue for more than two hundred forty (240) consecutive days, Tenant shall have the right to terminate this Lease by providing written notice to Landlord, such termination to be effective within five (5) Business Days of delivery of such notice.

16.4 Meters; Lighting Maintenance. The Premises shall be submetered as of the Commencement Date to measure Tenant’s usage of gas and electricity in the Premises. Landlord shall bill to Tenant directly as Additional Rent the charges for submetered gas and electricity usage in the Premises and charges for other Project utilities that Landlord reasonably allocates to Tenant based on such submetered gas and electricity usage. In addition, Landlord reserves the right to perform the Lighting Maintenance and to separately meter or monitor other utility services provided to the Premises, at Tenant’s expense, and bill the charges directly to Tenant, or to separately meter or monitor any other tenant and bill the charges directly to such tenant and to make appropriate adjustments to the Operating Expenses based on the meter charges. Tenant shall pay the charges Landlord bills to Tenant pursuant to this Section 16.4 within 30 days after receipt of Landlord’s invoice.

16.5 Telephone and Other Utility Charges. All telephone and other utility service used by Tenant in the Premises shall be paid for directly by Tenant except to the extent the cost of same is included within Operating Expenses or billed to Tenant pursuant to Article XVI.

16.6 Amenities. Landlord desires to offer certain amenities (“Amenities”), which are available only to the tenants of the Phase II Buildings, subject to the terms of Article II, and as of the Date of Lease include: (a) a café, pub, and barbeque area (as shown as “BBQ” on Exhibit G-3) which are located on the ground floor and patio area of the Amenity Building; (b) a fitness/health club facility, which is located on the second floor of the Amenity Building; (c) a putting green and recreation area, which is located on the roof of the Amenity Building; (d) the Stage, Entertainment Center, Orchard and Gaming Tables located in the Phase II Common Area; and (e) a bike room. Landlord also desires to offer a shuttle service to and from the Project and the Bart, Caltrain and light rail mass transit service locations (“Shuttle Service”), which Shuttle Service may be made available, at Landlord’s option, to other tenants of the Project in addition to the tenants of the Phase II Buildings. Tenant shall have the general and nonexclusive right, together with Landlord, the owner of Building 3 and the other tenants and occupants of the Building and Building 3, to use such Amenities and the Shuttle Service subject to (i) the terms and conditions of this Lease, and (ii) the Rules and Regulations and any rules and regulations that Landlord, the owner of Building 3 and Landlord’s independent operators may impose governing the hours, access to and use of the Amenities; provided, however, if the Shuttle Service is made available to other tenants of the Project, then Tenant shall have the general and nonexclusive right, together with Landlord, the other owners and the other tenants of the Project, to use the Shuttle Service. Landlord reserves the right to delegate the operation of the Shuttle Service and the Amenities to one or more independent operators (each an “Operator”). Landlord agrees that Tenant will be entitled to reserve the Amenity Building roof, the Amenity Building café, the
Amenity Building pub, the Entertainment Center, and the Stage (collectively, the “Reservation Amenities” and, each a “Reservation Amenity”) for Tenant’s exclusive use from time to time upon request to Landlord, which request shall set forth the dates, times and reason for such reservation. Landlord shall maintain an electronic calendar that permits Tenant, the tenants of the Building and the tenants of Building 3 to determine the dates available for such reservations and to make such reservations by selecting the available dates and times and entering the Reservation Amenity subject to the reservation and a description of the purpose of the reservation. The Reservation Amenities will be available for reservation on a first-come, first-served basis (except as provided in this Section 16.6), with the following limitations, (A) the reservation of the Amenity Building café or the Amenity Building pub (or both) shall be limited to 3:00 pm - 10:00 pm Monday through Friday, excluding Building holidays; and (B) the reservation of the Amenity Building roof, the Entertainment Center and the Stage shall be limited to 6:00 am - 10:00 pm Monday through Friday, excluding Building holidays and 7:00 am - 10:00 pm on weekends and Building holidays. Notwithstanding the foregoing, if Tenant requests a reservation of the Stage, the Entertainment Center, or a Reservation Amenity in the Amenity Building more than 12 times per year, collectively, then such reservation will be subject to the written consent to such reservation by the tenants of the Building and Building 3, which Landlord shall request from such tenants and exercise commercially reasonable efforts to obtain. By reserving a Reservation Amenity, Tenant acknowledges and agrees that (1) Landlord may require that Tenant execute Landlord’s commercially reasonable form of license agreement if Landlord reasonably determines appropriate due to Tenant’s purpose for reserving the Reservation Amenity, (2) Tenant shall be responsible, at Tenant’s sole cost and expense, in connection with its use of the Reservation Amenity and for Tenant’s set-up, takedown, security and cleanup, including, without limitation, the removal of all debris, litter, trash, and other materials left by Tenant or Tenant’s Agents in or about such Reservation Amenity, (3) Tenant shall return such Reservation Amenity to its condition immediately prior to Tenant’s use of such Reservation Amenity, (4) Tenant shall pay to Landlord within 30 days after Landlord’s delivery of a reasonably documented invoice for any costs and expenses incurred by Landlord and Landlord’s Agents in connection with Tenant’s failure to comply with the foregoing obligations, including, without limitation, for costs for extra janitorial, trash removal, repairs or maintenance, and (5) if Tenant desires services for food, beverage, valet, recreation, planning, programming, activities or any other purpose in connection with its reservation of any Reservation Amenity, then Tenant shall be responsible for contracting, at Tenant’s sole cost and expense, for such services directly with an Operator or a separate reputable vendor approved by Landlord, maintaining all licenses required under applicable laws, statutes, ordinances and governmental rules, regulations or requirements for providing such services, and providing proof of worker’s compensation insurance, commercial general liability insurance and any other insurance requested by Landlord in such amounts and meeting such requirements as reasonably requested by Landlord.

16.7 Roof Access. Subject to the terms of this Section 16.7, Tenant may during the Term install as an Alteration in accordance with Section 12.3, operate, maintain and use on the roof of the Building, in connection with Tenant’s use of the Premises supplemental HVAC equipment and associated Cabling and connections (collectively, “Rooftop Installations”). All costs and expenses associated with the design, fabrication, engineering, permitting, installation, screening, maintenance, repair and removal of the Rooftop Installations shall be borne solely by Tenant. Prior to Tenant’s installation of any Rooftop Installations, Tenant and Landlord shall execute a license agreement in substantially the form attached as Exhibit I ("License Agreement").
Further, as a condition to Tenant’s installation of any Rooftop Installations, Tenant shall comply with Article XII of this Lease in connection with the installation of the Rooftop Installations and perform and complete any work pursuant to the License Agreement (Rooftop Installations) in accordance with Article XII of the Lease and such License Agreement (Generator). Unless and until Landlord and Tenant have executed such License Agreement (Rooftop Installations) or unless otherwise accompanied by Landlord, Tenant shall not have the right to access the roof of the Building. Further, Tenant shall not perform work on, or make any modifications to, the roof of the Building, without Landlord’s prior consent, unless expressly permitted by such License Agreement (Rooftop Installations).

16.8 Emergency Generator. Subject to the terms of this Section 16.8, Tenant may during the Term, install as an Alteration in accordance with Section 12.3, maintain, operate and use an emergency generator and associated equipment, connections and Cabling (collectively, the “Generator Facilities”) for the sole purpose of providing back-up power for the Premises (and not for the use of any other tenant in the Building) during a power outage in the Premises; provided that (a) Landlord and Tenant execute a license agreement (“License Agreement (Generator)”) in substantially the form of the License Agreement (Rooftop Installations), with mutually acceptable modifications consistent with this Section 16.8; (b) Tenant complies with, and performs and completes any work performed pursuant to the License Agreement (Generator) in accordance with the License Agreement (Generator) and this Lease, including, without limitation, Article XII; (c) Tenant pays associated Additional Rent as provided in Section 16.2 of this Lease for any excess electricity use; and (d) such Generator Facilities are installed in the location identified on Exhibit J. Notwithstanding anything to the contrary in this Section 16.8, Landlord and Tenant shall cooperate to agree to modifications to the License Agreement (Rooftop Installations) reasonably requested by the other party and as necessary to take into account the type of Generator Facilities to be installed pursuant to such License Agreement (Generator) and the location thereof; provided that the License Agreement (Generator) shall provide, in any event, that (i) the installation of the Generator Facilities pursuant thereto shall be at Tenant’s sole cost and expense and shall be subject to Landlord’s reasonable approval of plans, specifications, location, method of installation, shielding, type of generator to be installed, manner of placement and manner of connection to the electrical system serving the Premises; (ii) Tenant shall be responsible for restoring and repairing any damage caused by the installation, use, maintenance or removal of such Generator Facilities (or reimbursing Landlord for the cost thereof); and (iii) if the Landlord requires the removal of the Generator Facilities, the Generator Facilities shall be removed by Tenant, at its sole cost and expense, before the expiration of the Term or earlier termination of the License in accordance with Section 12.3 and Section 22.1 of this Lease. In addition to Tenant’s obligations under the License Agreement (Generator), Tenant’s rights under this Section 16.8 are conditioned on Tenant’s compliance, at its sole cost and expense, with the following:

(A) Tenant shall maintain, repair, operate, use and remove the Generator Facilities in compliance with all applicable laws, ordinances, rules and regulations and with the Rules and Regulations. If governmentally required, Tenant shall file all necessary permits, registrations, plans and documents with the Environmental Protection Agency (“EPA”) and appropriate agencies of the State of California in connection with the installation, maintenance, repair, operation, use and removal of the Generator Facilities. Further, Tenant shall comply with any and all applicable rules, regulations and requirements which are imposed by the EPA and such agencies in connection with the installation, maintenance, repair, operation, use and removal of the Generator Facilities.
Tenant shall maintain and repair the Generator Facilities in good working order and condition. Accordingly, Tenant shall enter into and maintain from and after the date of installation of the Generator Facilities and throughout the term of the Lease one or more regularly scheduled preventative maintenance/service contracts, consistent with any applicable manufacturer’s specifications for the Generator Facilities and with one or more maintenance contractors reasonably acceptable to Landlord. Tenant’s service contracts shall include all services recommended by the Generator Facilities manufacturer within any applicable operation/maintenance manual and shall become effective on or before the date of installation of the Generator Facilities. Within five (5) business days after Landlord’s request (or immediately if Tenant is in default under this Section 16.8), Tenant shall deliver to Landlord copies of such service contracts and any renewals or replacements. Alternatively, and subject to Landlord’s prior approval (such approval not to be unreasonably withheld, conditioned or delayed), Tenant may perform some or all of the services required under the above-described preventative maintenance/service contracts with Tenant’s own qualified maintenance personnel. Tenant will make its records of such work available to Landlord for inspection, with timely and detailed entries in those logs so that the logs at all times accurately reflect, in commercially reasonable detail, the maintenance activity performed with respect to the Generator Facilities. Landlord or its employees and agent’s may inspect and copy such logs at any reasonable time and upon reasonable notice.

Landlord shall have the right to inspect the Generator Facilities upon reasonable prior notice to Tenant in order to verify compliance with this Section 16.8 and the License Agreement (Generator). If such inspections reveal any deviation from the requirements of this Section 16.8 or the License Agreement (Generator), Landlord may, in addition to any other rights and remedies under the Lease, require that Tenant immediately remedy such non-compliance or, if Tenant fails to so remedy such non-compliance, remove the Generator Facilities in accordance with this Section 16.8 and the License Agreement (Generator). Tenant shall have the right, in its sole discretion, to remove in accordance with the requirements of this Section 16.8 or discontinue its use of the Generator Facilities at any time; provided, however, if Tenant discontinues use of the Generator Facilities for more than 30 consecutive days, then Landlord shall have the right to require removal upon 30 days’ notice to Tenant and Tenant’s right to remove the Generator Facilities as provided in this Section 16.8 shall not affect Landlord’s right to require removal before the expiration of the Term or earlier termination of the License.

16.9 Additional Conduits. Subject to the terms of this Section 16.9, Tenant may during the Term, at Tenant’s sole cost and expense, install as an Alteration in accordance with Section 12.3 and use additional conduit in the Building in connection with Tenant’s use of the Premises. As a condition to Tenant’s installation of such conduit, Tenant shall comply with Article XII of this Lease in connection with such installation and perform and complete any associated work in accordance with Article XII of the Lease and any conditions to Landlord’s approval pursuant thereto; provided, however, that Landlord acknowledges and agrees that Tenant shall not be required to remove such additional conduit at the expiration of the Term or earlier termination of this Lease.
17.1 Tenant’s Indemnification. Except as otherwise provided in this Section 17.1 and in Section 17.2 and subject to the waiver of subrogation set forth in Section 15.5, Tenant will neither hold nor attempt to hold Landlord, its affiliates, their respective Agents or Mortgagee liable for, and Tenant will indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord, its affiliates, their respective Agents and Mortgagee, from and against, any and all Claims incurred in connection with or arising from (i) the use or occupancy or manner of use or occupancy of the Premises, or the use of Common Areas, by Tenant or its Agents; (ii) any activity, work or thing done, permitted or suffered by Tenant or its Agents in or about the Premises or done by Tenant or its Agents in or about the Project; (iii) any acts, omissions or negligence of Tenant or its Agents in or about the Premises or the Project; (iv) any breach, violation or nonperformance by Tenant, or violation by Tenant’s Agents, of any term, covenant or provision of this Lease or any law, ordinance or governmental requirement of any kind; (v) any injury or damage to the person, property or business of Tenant or its Agents, including, without limitation, to vehicles (or the contents thereof) of Tenant or Tenant’s Agent’s that are parked in the Parking Facilities, whether incurred in connection with the removal of any vehicles of Tenant or its Agents that are parked in violation of this Lease, the Rules and Regulations or otherwise; and (vi) arising in connection with the exercise by Tenant or Tenant’s Agents of the rights granted to Tenant’s employees in connection with the Dog Visitation Policy. Notwithstanding the foregoing, Tenant’s indemnities and hold harmless agreements set forth in this Section 17.1 shall not apply to the extent that the Claim is caused by the negligence or willful misconduct of Landlord.

17.2 Landlord’s Indemnification. Except as otherwise provided in this Section 17.2 and in Section 17.1 and except to the extent caused by the negligence or willful misconduct of Tenant or Tenant’s Agents, but subject to the waivers in Section 15.5, Landlord will neither hold nor attempt to hold Tenant or its Agents liable for, and Landlord will indemnify, hold harmless and defend (with counsel reasonably acceptable to Tenant) Tenant and its Agents from and against, any and all Claims to the extent incurred in connection with or arising from (i) acts or omissions of Landlord or Landlord’s Agents with respect to the performance of Landlord’s maintenance, repair, restoration and replacement obligations under this Lease constituting negligence or willful misconduct of Landlord or Landlord’s Agents and (ii) any other acts or omissions of Landlord or Landlord’s Agents constituting gross negligence or willful misconduct of Landlord or Landlord’s Agents.

17.3 Waiver and Release. Except to the extent caused by the gross negligence or willful misconduct of Landlord and its Agents, Tenant covenants and agrees that Landlord, its affiliates, their respective Agents and Mortgagee will not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage (including consequential damages) to persons, property or Tenant’s business occasioned by (i) subject to Section 17.2, any act or omission of Landlord, its affiliates, or their respective Agents; (ii) any acts or omissions, including theft, of or by any other tenant, occupant or visitor of the Project; (iii) any casualty, explosion, falling plaster or other masonry or glass, steam, gas, electricity, water or
rain which may leak from any part of the Building or any other portion of the Project or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place, or resulting from dampness; or (iv) the parking of vehicles by Tenant or Tenant’s Agents in the Parking Facilities, including, without limitation, when incurred in connection with the removal of any vehicles of Tenant or its Agents that are parked in violation of this Lease or the Rules and Regulations or otherwise. Tenant agrees to give prompt notice to Landlord upon the occurrence of any of the events set forth in this Section 17.3 or of defects in the Premises or the Building, or in the fixtures or equipment.

17.4 Survival. The covenants, agreements and indemnification obligations under this Article XVII will survive the expiration or earlier termination of this Lease. Tenant’s covenants, agreements and indemnification obligations are not intended to and will not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease.

XVIII. RULES AND REGULATIONS

Tenant and its Agents shall at all times abide by and observe the Rules and Regulations set forth in Exhibit C and any amendments thereto that may reasonably be promulgated in a nondiscriminatory manner from time to time by Landlord, with 14 days’ prior written notice of any such amendments, for the operation and maintenance of the Building, the Common Area and the Project and the Rules and Regulations shall be deemed to be covenants of this Lease to be performed and/or observed by Tenant. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations, or the terms or provisions contained in any other lease, against any other tenant of the Project; provided, however, that Landlord agrees to apply the Rules and Regulations on a non-discriminatory basis with respect to Tenant and all other tenants of the Project. Landlord shall not be liable to Tenant for any violation by any party of the Rules and Regulations or the terms of any other Project lease. If there is any inconsistency between this Lease (other than Exhibit C) and the then current Rules and Regulations, this Lease shall govern.

XIX. DAMAGE: CONDEMNATION

19.1 Damage to the Premises. (a) If the Premises or the Building shall be damaged by fire or other casualty, Landlord shall diligently and as soon as practicable after such damage occurs (taking into account the time necessary to effect a satisfactory settlement with any insurance company involved) repair such damage at the expense of Landlord; provided, however, that Landlord’s obligation to repair such damage shall not exceed the proceeds of insurance available to Landlord (reduced by any proceeds retained pursuant to the rights of Mortgagee). Notwithstanding the foregoing, if the Premises or the Building are damaged by fire or other casualty to such an extent that, in Landlord’s reasonable judgment, the damage cannot be substantially repaired within 240 days after the date of such damage, or if the Premises are substantially damaged during the last Lease Year, then: (i) Landlord may terminate this Lease as of the date of such damage by written notice to Tenant; or (ii) Tenant may terminate this Lease as of the date of such damage by written notice to Landlord within 10 days after (a) Landlord’s delivery of a notice that the repairs cannot be made within such 240-day period (Landlord shall use reasonable efforts to deliver to Tenant such notice within 45 days of the date of such damage.
or casualty); or (b) the date of damage, in the event the damage occurs during the last year of this Lease. Without limitation to the foregoing, if the Premises or the Building are damaged by fire or other casualty and Landlord’s reasonable estimate of the cost to repair such damage exceeds the proceeds of insurance available to Landlord (reduced by any proceeds retained pursuant to the rights of Mortgagee) or no such proceeds are available to Landlord, then Landlord shall not be obligated to incur expenses in excess of such insurance proceeds to repair such damage and may terminate this Lease as of the date of such damage by written notice to Tenant. Rent shall be apportioned and paid to the date of such damage.

(b) During the period that Tenant is deprived of the use of the damaged portion of the Premises, Basic Rent, Amenity Building Rent and Tenant’s Proportionate Share shall be reduced by the ratio that the Rentable Square Footage of the Premises damaged bears to the total Rentable Square Footage of the Premises before such damage; provided, however, that if more than fifty percent (50%) of the Premises or if access to the Premises is unusable in a manner that allows Tenant to abate Basic Rent, Operating Expense Rental and Real Estate Tax Rental under this Section 19.1(b), Tenant will be entitled to deem one hundred percent (100%) of the Premises to be unusable and receive a full abatement of Rent if Tenant vacates the entire Premises due to such casualty damage. All injury or damage to the Premises or the Project resulting from the gross negligence or willful misconduct of Tenant or its Agents shall be repaired by Landlord, at Tenant’s expense, subject to the waivers in Section 15.5, and Rent shall not abate nor shall Tenant be entitled to terminate this Lease. Notwithstanding anything herein to the contrary, Landlord shall not be required to rebuild, replace, or repair any of the following: (i) specialized Tenant improvements as reasonably determined by Landlord; (ii) Alterations; (iii) Tenant Work; or (iv) personal property of Tenant. Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases Tenant’s rights under California Civil Code Section 1932(2) and 1933(4) and agrees that in the event of any casualty, the terms of this Lease shall govern.

(c) If the Amenity Building shall be damaged by fire or other casualty, then to the extent that the Amenity Building Rent is not already subject to abatement under Section 19.1(b), the Amenity Building Rent shall be reduced during the period that Tenant is deprived of the use of Amenities of the Amenity Building by the ratio that the Rentable Square Footage of the Amenity Building damaged bears to the total Rentable Square Footage of the Amenity Building before such damage; provided, however if the injury or damage to the Amenity Building results from the gross negligence or willful misconduct of Tenant or its Agents, then the Amenity Building Rent shall not abate.

19.2 Condemnation. If (a) 10% or more of the Building or (b) any portion of the Building or Land shall be taken or condemned by any governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), and (i) Tenant no longer have access to the Building or the Parking Facilities or (ii) the Parking Facilities will no longer have sufficient parking spaces to comply with applicable zoning codes (each a, “Material Taking”), then Landlord or Tenant shall have the right to terminate this Lease by delivering written notice of such termination to the other party, in which event the Term shall cease and terminate as of the date when title vests in such governmental or quasi-governmental authority, and Rent shall be prorated to the date when title vests in such governmental or quasi-governmental authority; provided that, if Landlord terminates this Lease in connection with a Material Taking, then Landlord shall terminate all other similarly situation leases in the Building.

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If a portion of the Building or the Land is taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), but such taking does not result in a Material Taking, Basic Rent, the Amenity Building Rent and Tenant’s Proportionate Share shall be reduced by the ratio that the Rentable Square Footage of the portion of the Premises so taken bears to the Rentable Square Footage of the Premises before such taking, effective as of the date when title vests in such governmental or quasi-governmental authority, and this Lease shall otherwise continue in full force and effect. If a portion of the Amenity Building is taken or condemned by any governmental or quasigovernmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), but such taking does not occur in connection with a Material Taking in connection with which Landlord or Tenant terminates this Lease, then to the extent that the Amenity Building Rent is not already subject to reduction under this Section 19.2, the Amenity Building Rent shall be reduced by the ratio that the Rentable Square Footage of the portion of the Amenity Building so taken bears to the Rentable Square Footage of the Amenity Building before such taking, effective as of the date when title vests in such governmental or quasi-governmental authority, and this Lease shall otherwise continue in full force and effect. Tenant shall have no claim against Landlord (or otherwise) as a result of such taking, and Tenant hereby agrees to make no claim against the condemning authority for any portion of the amount that may be awarded as compensation or damages as a result of such taking; provided, however, that Tenant may, to the extent allowed by law, claim an award for moving expenses and for the taking of any of Tenant’s property (other than its leasehold interest in the Premises) which does not, under the terms of this Lease, become the property of Landlord at the termination hereof, as long as such claim is separate and distinct from any claim of Landlord and does not diminish Landlord’s award. Tenant hereby assigns to Landlord any right and interest it may have in any award for its leasehold interest in the Premises. This Section 19.2 shall be Tenant’s sole and exclusive remedy in the event of a taking or condemnation. Tenant hereby waives the benefit of California Code of Civil Procedure Section 1265.130.

XX. DEFAULT

20.1 Events of Default by Tenant. Each of the following shall constitute an Event of Default: (i) Tenant fails to pay Rent within five (5) business days after notice from Landlord; provided that no such notice shall be required if at least two such notices shall have been given during the previous 12 months; (ii) Tenant fails to observe or perform any other term, condition or covenant herein binding upon or obligating Tenant within 30 days after notice from Landlord; provided, however, that if such failure cannot reasonably be cured within such 30-day period, then such period to cure the default shall be extended for up to an additional 60 days provided Tenant has commenced to cure the default within the 30-day period and diligently pursues such cure to completion (notwithstanding the foregoing, if Landlord provides Tenant with notice of Tenant’s failure to observe or perform any term, condition or covenant under this Subsection (ii) on two or more occasions during any 12 month period, then Tenant’s subsequent violation of the same term, condition or covenant shall, at Landlord’s option, be deemed an Event of Default immediately upon the occurrence of such failure, regardless of whether Landlord provides Tenant notice, or Tenant has commenced the cure of the same); (iii) Tenant fails to pay Rent when due and abandons or vacates the Premises or fails to take occupancy of the Premises within 90 days after the Commencement Date; (iv) Tenant fails to execute and return a SNDA (as defined in Article XXI) or estoppel within the time periods provided for in Article XXI or Section 24.4 and such failure
20.2 Landlord’s Remedies. Upon the occurrence of an Event of Default, Landlord, at its option, without further notice or demand to Tenant, may, in addition to all other rights and remedies provided in this Lease, at law or in equity, elect one or more of the following remedies:

(a) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall have all the rights and remedies of a landlord provided by California Civil Code Section 1951.2, and in addition to any other rights and remedies Landlord may have, Landlord shall be entitled to recover from Tenant:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the costs and expenses (including attorneys’ fees, whether in-house or outside counsel) of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises and brokerage commissions, and any other reasonable costs and expenses.

As used in Sections 20.2(a)(i) and (ii) above, the “worth at the time of award” is computed by allowing interest at the Default Rate.
(b) Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Accordingly, Tenant acknowledges that in the event Tenant has breached this Lease and abandoned the Premises, this Lease may, at Landlord's election, continue in effect for so long as Landlord does not terminate Tenant’s right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease. Without limiting the generality of California Civil Code Section 1951.4(c), acts of maintenance or preservation or efforts to relet the Premises, or the appointment of a receiver upon initiative of Landlord to protect Landlord’s interest under this Lease shall not constitute a termination of Tenant’s right to possession.

(c) Even though Landlord may have re-entered the Premises as provided in clause (b) above, Landlord may thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(d) Landlord may cure the Event of Default for the account of Tenant, and in such event Tenant shall pay Landlord upon invoice as Additional Rent all costs and expenses incurred by Landlord in connection therewith, including consultants’ and attorneys’ fees and costs, together with an administrative charge equal to twenty percent (20%) of such costs.

(e) Landlord may pursue injunctive relief, and/or recovery of damages, without terminating this Lease.

20.3 Mitigation of Damages. Notwithstanding the foregoing, to the extent (but no further) Landlord is required by applicable law to mitigate damages, or is required by law to use efforts to do so, and such requirement cannot be lawfully and effectively waived (it being the intention of Landlord and Tenant that Tenant waive and Tenant hereby waives such requirements to the maximum extent permitted by applicable law), Tenant agrees that if Landlord markets the Premises in a manner substantially similar to the manner in which Landlord and its affiliates market other space in the Project, then Landlord shall be deemed to have used commercially reasonable efforts to mitigate damages. Tenant shall continue to be liable for all Rent (whether accruing prior to, on or after the date of termination of this Lease or Tenant’s right of possession and/or pursuant to the holdover provisions of Section 22.2 below) and Damages, except to the extent that Tenant pleads and proves by clear and convincing evidence that Landlord fails to exercise commercially reasonable efforts to mitigate damages to the extent required under this Section 20.3 and that Landlord’s failure caused an avoidable and quantifiable increase in Landlord’s damages for unpaid Rent. Without limitation to the foregoing, Landlord shall not be deemed to have failed to mitigate damages, or to have failed to use efforts required by law to do so, because: (i) Landlord leases other space in the Project which is vacant prior to re-letting the Premises; (ii) Landlord refuses to relet the Premises to any Related Entity of Tenant, or any principal of Tenant, or any Related Entity of such principal; (iii) Landlord refuses to relet the Premises to any person or entity whose creditworthiness is not acceptable to Landlord in the exercise of its reasonable discretion; (iv) Landlord refuses to relet the Premises to any person or entity because the use proposed to be made of the Premises by such prospective tenant is not general office use of a type and nature consistent with that of the other tenants in the portions of the Project leased or held for lease for general office purposes as of the date Tenant defaults under
this Lease (by way of illustration, but not limitation, call center or other high-density use, government offices, consular offices, doctor’s offices or medical or dental clinics or laboratories, or schools would not be uses consistent with that of other tenants in the Project), or such use would, in Landlord’s reasonable judgment, impose unreasonable or excessive demands upon the Building systems, equipment or facilities; (v) Landlord refuses to relet the Premises to any person or entity, or any affiliate of such person or entity, who has been engaged in litigation with Landlord or any of its affiliates; (vi) Landlord refuses to relet the Premises because the tenant or the terms and provisions of the proposed lease are not approved by the holders of any liens or security interests in the Building, or would cause Landlord to be in default of, or to be unable to perform any of its covenants or obligations under, any agreements between Landlord and any third party; (vii) Landlord refuses to relet the Premises because the proposed tenant is unwilling to execute and deliver Landlord’s standard lease form or such tenant requires improvements to the Premises to be paid at Landlord’s cost and expense; (viii) Landlord refuses to relet the Premises to a person or entity whose character or reputation, or the nature of such prospective tenant’s business, would not be acceptable to Landlord in its reasonable discretion; and (ix) Landlord refuses to expend any material sums of money to market the Premises in excess of the sums Landlord typically expends in connection with the marketing of other space in the Project. As used in this Section 20.3, an “affiliate” means a person or entity that controls, is controlled by, or is under common control with another person or entity.

20.4 No Waiver. If Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any other covenant, condition or agreement herein contained, nor of any of Landlord’s rights hereunder. No waiver by Landlord of any breach shall operate as a waiver of such covenant, condition or agreement itself, or of any subsequent breach thereof. No payment of Rent by Tenant or acceptance of Rent by Landlord shall operate as a waiver of any breach or default by Tenant under this Lease. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent herein stipulated shall be deemed to be other than a payment on account of the earliest unpaid Rent, nor shall any endorsement or statement on any check or communication accompanying a check for the payment of Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or to pursue any other remedy provided in this Lease. No act, omission, reletting or re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of this Lease, shall be construed as an actual or constructive eviction of Tenant, or an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord.

20.5 Late Payment. If Tenant fails to pay any Rent within five days after such Rent becomes due and payable, Tenant shall pay to Landlord without notice a late charge of 5% of the amount of such overdue Rent. Such late charge shall be deemed Rent and shall be due and payable within two days after written demand from Landlord.

20.6 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future law to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.
20.7 **Default by Landlord.** If Landlord fails to observe or perform any term, condition or covenant herein binding upon or obligating Landlord pursuant to this Lease, then a “Default” shall exist if such failure continues for thirty (30) days after the receipt by Landlord of written notice from Tenant specifying in detail Landlord’s alleged failure to so observe or perform; provided, however, that if such failure cannot be cured within said 30-day period, then Landlord shall not be in Default under this Lease if it commences such observance or performance within such thirty (30) day period and thereafter diligently pursues the same to completion within 180 days after the initial 30-day cure period. Tenant hereby covenants that, prior to the exercise of any remedies for a Default, Tenant will give notice and an opportunity to cure to any Mortgagor of which Tenant has been given notice and as otherwise required under any applicable SNDA.

### XXI. MORTGAGES

Contemporaneously with the execution of this Lease, Tenant and Landlord shall execute and acknowledge, and Landlord shall exercise commercially reasonable efforts to obtain from the existing Mortgagor (as defined in this Article XXI), an SNDA on the existing Mortgagor’s form attached as Exhibit L, and incorporated herein (“Existing Mortgage SNDA”). Subject to the terms of a fully executed SNDA, this Lease is subject and subordinate to any future ground or underlying leases (each a “Ground Lease”) and to any mortgage, deed of trust, security interest, or title retention interest now or hereafter affecting the Land, Building or Project (each a “Mortgage”) and to all renewals, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative; however, in confirmation thereof, Tenant shall, within 10 days of receipt thereof, execute any instrument that Landlord, or any ground lessor under a Ground Lease (“Ground Lessor”) or any holder of any note or obligation secured by Mortgage (“Mortgagor”) may request confirming such subordination or Tenant’s attornment to such Ground Lessor or purchaser of Landlord’s interest under this Lease, as applicable, and providing, among other things, that so long as there is no Event of Default hereunder, Tenant’s use and occupancy of the Premises and its rights under this Lease shall not be disturbed or affected following, as applicable the termination of such Ground Lease or by any foreclosure or other action (or by the delivery or acceptance of a deed or other conveyance or transfer in lieu thereof) which may be instituted or undertaken in order to enforce any right or remedy available under the Mortgage (“SNDA”). Notwithstanding the foregoing, before any foreclosure sale under a Mortgage or termination of a Ground Lease, subject to the terms of any applicable SNDA, the Mortgagor or Ground Lessor, as applicable, shall have the right to subordinate the Mortgage or Ground Lease, as applicable, to this Lease, in which case, in the event of such foreclosure or termination, this Lease may continue in full force and effect and Tenant shall attorn to and recognize as its landlord, as applicable, the Ground Lessor or the purchaser at foreclosure of Landlord’s interest under this Lease.

### XXII. SURRENDER: HOLDING OVER

22.1 **Surrender of the Premises.** Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date or earlier termination of this Lease, in broom-clean condition and in as good condition as when Tenant took possession, including, without limitation, the repair of any damage to the Premises caused by the removal of any of Tenant’s personal property, Alterations, Rooftop Installations, or trade fixtures from the Premises, except for reasonable wear and tear and loss by fire or other casualty and condemnation and any Alterations that Tenant is not
required to remove pursuant to Section 12.3. All trade fixtures, equipment, furniture, inventory, effects and Alterations left on or in the Premises or the Project after the Expiration Date or earlier termination of this Lease will be deemed conclusively to have been abandoned and may be appropriated, removed, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account for them; and Tenant will pay Landlord for all expenses incurred in connection with the same, including, but not limited to, the costs of repairing any damage to the Premises or the Project caused by the removal of such property. Tenant’s obligation to observe and perform this covenant will survive the expiration or other termination of this Lease.

22.2 Holding Over. In the event that Tenant shall not immediately surrender the Premises to Landlord on the Expiration Date or earlier termination of this Lease, including removing all trade fixtures, equipment, furniture, inventory, effects and Alterations from the Premises, Tenant shall be deemed to be a tenant-at-will pursuant to the terms and provisions of this Lease, except the daily Basic Rent shall be 150% the daily Basic Rent in effect on the Expiration Date or earlier termination of this Lease (computed on the basis of a 30 day month). Notwithstanding the foregoing, if Tenant shall hold over after the Expiration Date or earlier termination of this Lease, and Landlord shall desire to regain possession of the Premises, then Landlord may forthwith re-enter and take possession of the Premises without process, or by any legal process provided under applicable state law. If Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant’s holdover for more than 120 days, Tenant shall be liable to Landlord for all damages, including, without limitation, special or consequential damages, that Landlord suffers from the holdover, including, without limitation, as the result of any claims against Landlord brought by the new tenant.

XXIII. QUIET ENJOYMENT

Landlord covenants that if Tenant shall pay Rent and perform all of the terms and conditions of this Lease to be performed by Tenant, Tenant shall during the Term peaceably and quietly occupy and enjoy possession of the Premises without molestation or hindrance by Landlord or any party claiming through or under Landlord, subject to the provisions of this Lease, any Mortgage to which this Lease is subordinate, the Declaration, the Phase II Easement Agreement, the Sports Park Easement Agreement and any other applicable recorded easement agreements, covenants, conditions and restrictions, if any amendments to the Declaration, Phase II Easement Agreement or Sports Park Easement Agreement are adopted in accordance with the terms thereof, then Landlord shall promptly deliver to Tenant a copy of any such amendments after Landlord receives a recorded copy of such of amendment or is otherwise aware that such amendment has been recorded.

XXIV. MISCELLANEOUS

24.1 No Representations by Landlord. Tenant acknowledges that neither Landlord nor its Agents nor any broker has made any representation or promise with respect to the Premises, the Project, the Land or the Common Area, except as expressly set forth in this Lease, and no rights, privileges, easements or licenses are acquired by Tenant except as expressly set forth in this Lease.
24.2 **No Partnership.** Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between Landlord and Tenant other than that of landlord and tenant.

24.3 **Brokers.** Landlord recognizes Broker(s) as the sole broker(s) procuring this Lease and shall pay Broker(s) a commission therefor pursuant to a separate agreement between Broker(s) and Landlord. Landlord and Tenant each represents and warrants to the other that it has dealt with no broker, agent, finder or other person other than Broker(s) relating to this Lease. **Landlord shall indemnify and hold Tenant harmless, and Tenant shall indemnify and hold Landlord harmless, from and against any and all loss, costs, damages or expenses (including, without limitation, all attorneys’ fees and disbursements) by reason of any claim of liability to or from any broker or person arising from or out of any breach of the indemnitor’s representation and warranty.**

24.4 **Estoppel Certificate.** Tenant shall, without charge, at any time and from time to time, within 10 days after request therefor by Landlord, execute, acknowledge and deliver to Landlord a written estoppel certificate certifying, as of the date of such estoppel certificate, the following: (i) that this Lease is unmodified and in full force and effect (or if modified, that this Lease is in full force and effect as modified and setting forth such modifications); (ii) whether the Term has commenced (and setting forth the Commencement Date and Expiration Date); (iii) whether Tenant is presently occupying the Premises; (iv) the amounts of Basic Rent and Additional Rent currently due and payable by Tenant; (v) that any Tenant Work or Alterations required by this Lease to have been made by Landlord have been made to the satisfaction of Tenant; (vi) that there are no existing set-offs, charges, liens, claims or defenses against the enforcement of any right hereunder, including, without limitation, Basic Rent or Additional Rent (or, if alleged, specifying the same in detail); (vii) that no Basic Rent (except the first installment thereof) has been paid more than 30 days in advance of its due date; (viii) that Tenant has no knowledge of any then uncured default by Landlord of its obligations under this Lease (or, if Tenant has such knowledge, specifying the same in detail); (ix) that Tenant is not in default (or, if Tenant is in default, specifying the same in detail); (x) that the address to which notices to Tenant should be sent is as set forth in this Lease (or, if not, specifying the correct address); and (xi) to the extent accurate, any other certifications reasonably requested by Landlord. In the event Tenant fails to deliver to Landlord an estoppel certificate as required by this Section within the specified 10-day period, Tenant shall be conclusively presumed to have adopted and affirmed the contents of the form of estoppel certificate delivered to Tenant by Landlord, and any prospective mortgagee, purchaser, or other third-party may rely on the accuracy of such estoppel certificate as if executed and affirmed by Tenant. Landlord and Tenant intend that any statement delivered pursuant to this Section 24.4 may be relied upon by Landlord, and any owner, prospective mortgagee or prospective purchaser in the Project.

24.5 **Waiver of Jury Trial.** To the fullest extent permitted by law, Landlord and Tenant each waive trial by jury in connection with proceedings or counterclaims brought by either of the parties against the other with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder or Tenant’s use or occupancy of the Premises.
24.6 **Notices.** All notices, demands and requests which may be given or which are required to be given by either party to the other, shall be in writing and shall be deemed effective either: (i) on the date personally delivered to the address set forth in **Article I**, as evidenced by written receipt for the same, whether or not actually received by the person to whom addressed; (ii) on the third business day after being sent, by certified or registered mail, return receipt requested, postage prepaid, addressed to the intended recipient at the address specified **Article I**; (iii) on the next succeeding business day after being deposited into the custody of a nationally recognized overnight delivery service such as Federal Express, addressed to the party at the address specified **Article I**; (iv) on the date delivered by facsimile to the respective numbers specified in **Article I**, provided confirmation of facsimile is received; or (v) on the date an electronic mail message with a pdf copy of the signed notice is delivered to the e-mail addresses specified in **Article I**; provided, however, that in the case of any notice delivered in accordance with items (iv) or (v) above, any such facsimile notice or e-mail notice shall be sent by one of the other permitted methods of providing notice (other than facsimile or e-mail notice) on the next succeeding business day. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

24.7 **Invalidity of Particular Provisions.** If any provisions of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

24.8 **Gender and Number.** All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number or gender as the context may require.

24.9 **Benefit and Burden.** Subject to the provisions of **Article X** and except as otherwise expressly provided, the provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective representatives, heirs, successors and assigns.

24.10 **Entire Agreement.** This Lease (which includes the Exhibits attached hereto) contains and embodies the entire agreement of the parties hereto, and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Lease shall be of any force or effect. This Lease (other than the Rules and Regulations, which may be changed from time to time as provided herein) may not be modified, changed or terminated in whole or in part in any manner other than by an agreement in writing duly signed by Landlord and Tenant.

24.11 **Authority.** If Tenant signs as a corporation, limited liability company or partnership, the person executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is duly formed, validly existing, in good standing (with respect to a corporation or limited liability company), and qualified to do business in the state in which the Project is located, that Tenant has full power and authority to enter into this Lease and that he or she is authorized to execute this Lease on behalf of Tenant. Tenant further agrees that it shall provide Landlord with a secretary’s certificate from the secretary of said corporation or limited liability company, if applicable, certifying as to the above in the form of **Exhibit D** attached hereto and made a part hereof, or, if Tenant is a partnership, it shall provide Landlord with a partnership authorization.
certifying as to the above in a form acceptable to Landlord. At the request of Landlord, Tenant shall provide to Landlord copies of Tenant’s organizational documents and such incumbency certificate and minutes or resolution certified by an authorized representative of Tenant as being true, correct, and complete, as may be reasonably required to demonstrate that this Lease is binding upon and enforceable against Tenant. Landlord represents and warrants that Landlord is a duly formed, validly existing, in good standing limited liability company that is qualified to do business in the state in which the Project is located, that Landlord has full power and authority to enter into this Lease and that the person executing this Lease on behalf of Landlord is authorized to execute this Lease on behalf of Landlord.

24.12 Attorneys’ Fees. If either Landlord or Tenant commences any legal action or proceeding against the other party (including, without limitation, litigation or arbitration) arising out of or in connection with this Lease, the Premises, or the Project (including, without limitation (a) the enforcement or interpretation of either party’s rights or obligations under this Lease (whether in contract, tort, or both) or (b) the declaration of any rights or obligations under this Lease), the prevailing party shall be entitled to recover from the losing party reasonable attorneys’ fees, together with any costs and expenses, incurred in any such action or proceeding, including any attorneys’ fees, costs, and expenses incurred on collection and on appeal.

24.13 Interpretation. This Lease is governed by the laws of the state in which the Project is located. All references in this Lease to specific sections of California law shall be deemed to mean and refer to any amendment thereto, and to any renumbered counterpart or superseding successor thereto. Furthermore, this Lease shall not be construed against either party more or less favorably by reason of authorship or origin of language.

24.14 Limitation of Liability. None of Landlord’s shareholders, partners, members, managers, directors, officers or employees, whether disclosed or undisclosed, shall have any personal liability under any provision of this Lease. If Landlord defaults in the performance of any of its obligations hereunder or otherwise becomes liable, responsible or in any way accountable to Tenant for any loss, injury, death or damage (including consequential damages) in connection with this Lease, Tenant shall look solely to Landlord’s equity, interest and rights in the Project for satisfaction of Tenant’s remedies on account thereof, including, subject to the rights of any Mortgagee, Landlord’s interest in the rents of the Building and any insurance proceeds payable to Landlord. Landlord or any successor owner shall have the right to transfer and assign to a third party, in whole or in part, all of its rights and obligations hereunder and in the Building, the Project or the Land, or any portion thereof, and in such event, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease occurring thereafter, shall terminate as of the day of such sale, and thereupon all such liabilities and obligations shall be binding on the new owner. In the event of such transfer or assignment, Landlord shall transfer to such transferee or assignee the balance of the Security Deposit, if any, remaining after lawful deductions and, in accordance with California Civil Code Section 1950.7, after notice to Tenant, Landlord shall thereupon be relieved of all liability with respect to the Security Deposit.

24.15 Time of the Essence. Time is of the essence as to Tenant’s obligations contained in this Lease.
24.16 **Force Majeure.** Landlord and Tenant (except with respect to the payment of Rent) shall not be chargeable with, liable for, or responsible to the other for anything or in any amount for any failure to perform or delay caused by: fire; earthquake; explosion; flood; hurricane; the elements; acts of God or the public enemy; actions, restrictions, governmental authorities (permitting or inspection), governmental regulation of the sale of materials or supplies or the transportation thereof; war; invasion; insurrection; rebellion; riots; strikes or lockouts, inability to obtain necessary materials, goods, equipment, services, utilities or labor; or any other cause whether similar or dissimilar to the foregoing which is beyond the reasonable control of such party (collectively, “Events of Force Majeure”): and any such failure or delay due to said causes or any of them shall not be deemed to be a breach of or default in the performance of this Lease.

24.17 **Headings.** Captions and headings are for convenience of reference only.

24.18 **Memorandum of Lease.** Neither Landlord nor Tenant shall record this Lease or a memorandum thereof without the written consent of the other.

24.19 **Intentionally Deleted.**

24.20 **Financial Reports.** Within 15 days after Landlord’s request, but in no event more than once per Lease Year unless an uncured Event of Default exists or such request is in connection with a sale or financing of the Project, in which event no such limitation shall apply, Tenant will furnish Tenant’s and Guarantor’s most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant, or, failing those, Tenant’s and Guarantor’s internally prepared financial statements, certified by Tenant and Guarantor, as applicable. If requested by Tenant, Landlord shall execute a confidentiality agreement confirming that Landlord will keep confidential Tenant’s confidential and proprietary financial information provided to Landlord in accordance with this **Section 24.20** in accordance with terms substantially consistent with the Non-Disclosure Agreement dated effective February 22, 2019, between Landlord and Tenant, a copy of which is attached as **Exhibit K**.

24.21 **Landlord’s Fees.** Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for all of Landlord’s actual documented out-of-pocket costs incurred in reviewing the proposed action or consent, including, without limitation, attorneys’, engineers’ or architects’ fees, within 30 days after Landlord’s delivery to Tenant of a statement of such costs. If requested by Tenant in connection with the request for action or consent, Landlord shall provide Tenant with an estimate for any actual out-of-pocket costs to be incurred by Landlord in reviewing a proposed action or consent requested by Tenant. In no event shall Tenant be obligated to pay more than the estimate amount without Tenant’s prior consent thereto. Tenant acknowledges that Landlord shall not have any obligation to proceed with the evaluation of any request until Tenant has approved the estimate amount. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.
24.22 **Effectiveness.** The furnishing of the form of this Lease shall not constitute an offer and this Lease shall become effective upon and only upon its execution by and delivery to each party hereto.

24.23 **Light, Air or View Rights.** Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building and Project shall not affect this Lease, abate any payment owed by Tenant hereunder or otherwise impose any liability on Landlord.

24.24 **Special Damages.** Under no circumstances whatsoever shall Landlord ever be liable hereunder for punitive damages, consequential damages or special damages. Except to the extent of Tenant’s liability for consequential damages and special damages pursuant to Section 22.2, under no circumstances whatsoever shall Tenant ever be liable hereunder for consequential, special or punitive damages.

24.25 **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Lease may be executed by a party’s signature transmitted by facsimile or e-mail, and copies of this Lease executed and delivered by means of faxed or e-mailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or e-mailed signatures as if such signatures were originals. All parties hereto agree that a faxed or e-mailed signature page may be introduced into evidence in any proceeding arising out of or related to this Lease as if it were an original signature page.

24.26 **Nondisclosure of Lease Terms.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord’s relationship with other tenants. Without limitation to the foregoing, Tenant agrees that it, and its Agents shall not intentionally or voluntarily disclose the terms and conditions of this Lease to any publication or newspaper or any other tenant or apparent prospective tenant of the Building or the Project, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease. If Tenant or its Agents are required by applicable law or a valid legal order or on the advice of its counsel to disclose any terms and conditions of this Lease, Tenant shall, prior to disclosure, notify Landlord of the requirements so that Landlord may seek a protective order or other remedy, and Tenant shall reasonably assist Landlord therewith.

24.27 **Intentionally Deleted.**

24.28 **Anti-Terrorism.** Tenant represents and warrants to and covenants with Landlord that (i) neither Tenant nor any of its owners or affiliates currently are, or shall be at any time during the term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the “Anti-Terrorism Laws”), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and regulations of the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) related to Specially Designated Nationals and Blocked Persons (SDN’s OFAC Regulations), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)
(the "USA Patriot Act"); (ii) neither Tenant nor any of its owners, affiliates, investors, officers, directors, employees, vendors, subcontractors or agents is or shall be during the term hereof a "Prohibited Person" which is defined as follows: (1) a person or entity owned or controlled by, affiliated with, or acting for or on behalf of any person or entity that is identified as an SDN on the then-most current list published by OFAC at its official website, https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx, or at any replacement website or other replacement official publication of such list, and (2) a person or entity who is identified as or affiliated with a person or entity designated as a terrorist, or associated with terrorism or money laundering pursuant to regulations promulgated in connection with the USA Patriot Act; and (iii) Tenant has taken appropriate steps to understand its legal obligations under the Anti-Terrorism Laws and has implemented appropriate procedures to assure its continued compliance with such laws. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord, its officers, directors, agents and employees, from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney’s fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants. At any time and from time-to-time during the term, Tenant shall deliver to Landlord within 10 days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Landlord evidencing and confirming Tenant’s compliance with this paragraph.

24.29 Green Initiatives. The parties agree it is in their mutual best interest that the Building and the Premises be operated and maintained in a manner that is environmentally responsible, fiscally prudent, and provides a safe and productive work environment. Accordingly, Tenant shall endeavor to conduct its operations in the Building and within the Premises to: (1) minimize to the extent reasonably feasible: (i) direct and indirect energy consumption and greenhouse gas emissions; (ii) water consumption; (iii) the amount of material entering the waste stream; and (iv) negative impacts upon the indoor air quality of the Building; and (2) permit the Building to achieve and maintain its LEED rating and an Energy Star label, to the extent applicable. Landlord shall endeavor to operate and maintain the Common Area to: minimize to the extent reasonably feasible: (i) direct and indirect energy consumption and greenhouse gas emissions; (ii) water consumption; (iii) the amount of material entering the waste stream; and (iv) negative impacts upon the indoor air quality of the Building. Tenant shall comply with all building energy benchmarking and other requirements imposed by applicable laws, statutes, ordinances and governmental rules, regulations or requirements, including regulations promulgated by the California Energy Commission in implementation of AB 802 and retain copies of its utility data, including, without limitation, Tenant’s utility bills and invoices pertaining to Tenant’s energy, water, and trash usage at the Premises during the Term. In addition, if requested by Landlord or a governmental entity having jurisdiction over the Premises, Tenant shall report to Landlord and such requesting entity the Tenant’s utility usage and such other related information as may be requested within the time required by the governmental entity or such other reasonable time frame as may be requested by Landlord or, at Landlord’s option, provide any written authorization, utility release forms or other documentation required for Landlord to request information regarding Tenant’s utility usage with respect to the Premises directly from the applicable utility company.

XXV. RENEWAL OPTIONS

25.1 Grant of Option and General Terms. Provided that (i) Tenant meets or exceeds the Minimum Credit Standards, and proof satisfactory to Landlord that such Minimum Credit
Standards have been met shall be delivered to Landlord with Tenant’s delivery of the Renewal Notice (as defined in Section 25.2), (ii) this Lease is in full force and effect, (iii) no Event of Default shall exist under this Lease or would exist but for the pendency of any cure periods provided under Section 20.1 herein on the date Tenant exercises its Renewal Option (as defined in this Section 25.1) and (iv) McAfee, LLC, a Delaware limited liability company, its Related Entity pursuant to an assignment or sublease in accordance with Section 10.4 or its assignee pursuant to an Ownership Transfer made in accordance with Section 10.5 is in possession of at least the entire Fifth & Sixth Floor Premises; Tenant shall have the option to extend the Term of this Lease with respect to the entire Premises for two (2) additional periods (each a “Renewal Option”) of five (5) years each (each a “Renewal Term”). Each Renewal Option shall be subject to all of the terms and conditions contained in the Lease except that (i) the Renewal Rent (as defined in Section 25.3) shall be at the then prevailing Market Rate (as defined in Section 25.3) on the commencement date of the applicable Renewal Term; (ii) Landlord shall have no obligation to improve the Premises or provide any improvement allowance; and (iii) there shall be no further option to extend the Term beyond the second Renewal Term.

25.2 Determination of Market Rate. Tenant shall send Landlord a preliminary expression of Tenant’s willingness to renew this Lease (the “Renewal Notice”) no earlier than September 30, 2029, or later than December 31, 2029, with respect to the first Renewal Option and, if the Term is extended for the first Renewal Term in accordance with this Article XXV, no earlier than September 30, 2034, or later than December 31, 2034, with respect to the second Renewal Option. Tenant and Landlord shall negotiate in good faith to determine and mutually agree upon the Market Rate for the applicable Renewal Term. If Landlord and Tenant are unable to agree upon the Market Rate for the applicable Renewal Term, or on or before 240 days prior to the expiration of the initial Term of this Lease or the expiration of the first Renewal Term with respect to the second Renewal Term, as applicable (the “Negotiation Period”), as evidenced by an amendment to the Lease executed by both Landlord and Tenant, then within 10 days after the last day of the applicable Negotiation Period, Tenant may, by written notice to Landlord (the “Notice of Exercise”), irrevocably elect to exercise such Renewal Option. In order for Tenant to exercise such Renewal Option, Tenant shall send the Notice of Exercise to Landlord stating (i) that Tenant is irrevocably exercising its right to extend the Term pursuant to Article XXV; and (ii) Landlord and Tenant shall be irrevocably bound by the determination of Market Rate set forth hereinafter in this Section 25.2, and if applicable, Section 25.4. If Tenant shall fail to deliver the Notice of Exercise on or before 10 days after the last day of the applicable Negotiation Period, then Tenant shall have waived any right to exercise the Renewal Options. In the event any date referenced in this Section 25.2 falls on a day other than a business day, such date shall be deemed to be the next following business day.

In the event Tenant timely delivers the Notice of Exercise to Landlord, Landlord and Tenant shall each simultaneously present to the other party their final determinations of the Market Rate for the applicable Renewal Term (the “Final Offers”) within 15 days after the last day of the applicable Negotiation Period. If the Market Rate as determined by the lower of the two (2) proposed Final Offers is not more than ten percent (10%) below the higher, then the Market Rate shall be determined by averaging the two (2) Final Offers.
If the difference between the lower of the two (2) proposed Final Offers is more than ten percent (10%) below the higher, then the Market Rate shall be determined by the procedure (“Baseball Arbitration”) set forth in **Section 25.4**.

25.3 **Renewal Rent.** The “Renewal Rent” for each Renewal Term shall be an amount equal to the prevailing Market Rate determined in accordance with this **Article XXV**. As used in this **Article XXV** “Market Rate” shall mean the then prevailing market rate for triple net base rent for tenants, at arm’s length, of comparable quality for renewal leases located on the top two floors in similar vintage multi-story, multi-tenant steel frame, Class A office buildings of comparable size, age, use, location and quality in the North San Jose/Santa Clara market area, taking into consideration the extent of the availability of space as large as the Premises in the marketplace, the location of the Fifth & Sixth Floor Premises on the top two floors of the Building, Tenant’s right to Building Signage, Building Monument Signage and freeway-visible Project Monument Signage, the Common Area Amenities and the Amenity Building Rent and all other economic terms then customarily prevailing in such renewal leases in said marketplace.

25.4 **Baseball Arbitration.** For all purposes of this Lease, Baseball Arbitration shall follow the following procedures:

(a) Within 20 days after Landlord’s receipt of Tenant’s Notice of Exercise, Tenant and Landlord shall each select an arbitrator (“Tenant’s Arbitrator” and “Landlord’s Arbitrator”, respectively) who shall be a qualified and impartial person licensed in the State of California as an MAI appraiser with at least five (5) years of experience in appraising the type of matters for which they are called on to appraise under this **Article XXV** in the North San Jose/Santa Clara market area.

(b) Landlord’s Arbitrator and Tenant’s Arbitrator shall name a third arbitrator, similarly qualified, within 10 days after the appointment of Landlord’s Arbitrator and Tenant’s Arbitrator.

(c) Said third arbitrator shall, after due consideration of the factors to be taken into account under the definition of Market Rate set forth in **Section 25.2** and hearing whatever evidence the arbitrator deems appropriate from Landlord, Tenant and others, and obtaining any other information the arbitrator deems necessary, in good faith, make its own determination of the Market Rate for the Premises as of the commencement of the applicable Renewal Term (the “Arbitrator’s Initial Determination”) and thereafter select either Landlord’s Final Offer or the Tenant’s Final Offer, but no other, whichever is closest to the Arbitrator’s Initial Determination (the “Final Determination”), such determination to be made within 30 days after the appointment of the third arbitrator. The Arbitrator’s Initial Determination, Final Determination and the market information upon which such determinations are based shall be in writing and counterparts thereof shall be delivered to Landlord and Tenant within said 30 day period. The arbitrator shall have no right or ability to determine the Market Rate in any other manner. The Final Determination shall be binding upon the parties hereto.

(d) The costs and fees of the third arbitrator shall be paid by Landlord if the Final Determination shall be Tenant’s Final Offer or by Tenant if the Final Determination shall be Landlord’s Final Offer.
(e) If Tenant fails to appoint Tenant’s Arbitrator in the manner and within the time specified in **Section 25.4**, then the Market Rate for the applicable Renewal Term shall be the Market Rate contained in the Landlord’s Final Offer. If Landlord fails to appoint Landlord’s Arbitrator in the manner and within the time specified in **Section 25.4** then the Market Rate for the applicable Renewal Term shall be the Market Rate contained in the Tenant’s Final Offer. If Tenant’s Arbitrator and Landlord’s Arbitrator fail to appoint the third arbitrator within the time and in the manner prescribed in **Section 25.4**, then Landlord and Tenant shall jointly and promptly apply to the local office of the American Arbitration Association for the appointment of the third arbitrator.

25.5 **Personal Option.** The Renewal Options are personal with respect to MCAFEE, LLC, a Delaware limited liability company and either a Related Entity to whom this Lease is assigned in accordance with **Section 10.4** or an assignee to whom this Lease is assigned pursuant to an Ownership Transfer made in accordance with **Section 10.5**. Any assignment of the Lease or subletting of any portion of Fifth & Sixth Floor Premises other than to a Related Entity in accordance with **Section 10.4** or pursuant to an Ownership Transfer in accordance with **Section 10.5** shall automatically terminate MCAFEE, LLC, a Delaware limited liability company’s rights under this **Article XXV**. Time is of the essence with respect to the provisions of this **Article XXV**.

### XXVI. RIGHT OF FIRST OFFERING

26.1 **General.** If, at any time during the Term, any portion of the remainder of the first floor of the Building or the second, third, or fourth floors of the Building (each a, and collectively, the “**Right of First Offering Space**”) becomes vacant and is not subject to any Senior Rights (as defined in **Section 26.1.1**), Landlord shall so notify Tenant (the **“Right of First Offering Notice”**), which Right of First Offering Notice shall contain the material economic terms on which Landlord is willing to lease the Right of First Offering Space to Tenant (including, without limitation, prevailing annual market rent, length of term, and Rentable Square Footage). Prevailing annual market rent for the Right of First Offering Space shall be an amount equal to the then prevailing market rate (“**ROFO Market Rent**”) for triple net base rent for tenants, at arm’s length, of comparable quality for new leases in similar vintage multi-story, multitenant steel frame, Class A office buildings of comparable size, age, use, location and quality in the North San Jose/Santa Clara market area, taking into consideration the extent of the availability of space as large as the Right of First Offering Space in the marketplace, the location of the floors of the Right of First Offering Space in the Building, Tenant’s right to Building Signage, Building Monument Signage and freeway-visible Project Monument Signage, the Common Area Amenities and the Amenity Building Rent and all other economic terms then customarily prevailing in such leases in said marketplace. Tenant shall have a period of seven (7)-business days after the date of Landlord’s delivery of such Right of First Offering Notice during which to elect either to lease all of the Right of First Offering Space described in the Right of First Offering Notice (on the terms set forth in such Right of First Offering Notice), refuse to lease the same or counter the ROFO Market Rent presented by the Landlord along with the reasons for the Tenant’s counter of a differing rental amount based on the factors listed in the preceding sentence (“**Right of First Offering**”). Failure of Tenant to deliver notice of such election (“**Election Notice**”) within such seven business-day period shall be deemed a refusal to lease such Right of First Offering Space. In the event Tenant timely delivers the Election Notice countering the ROFO Market Rent, Landlord and Tenant agree
to negotiate in good faith within the seven (7)-business day period after Tenant’s delivery of such Election Notice. If the parties agree to the ROFO Market Rent during such seven (7)-business day period, then during such seven (7)-business day period, Landlord shall deliver to Tenant a revised Right of First Offering Notice containing the revised ROFO Market Rent (the “Revised Right of First Offering Notice”) and Tenant shall deliver notice to Landlord electing to exercise Tenant’s Right of First Offering to lease all of the Right of First Offering Space on the terms set forth in the Revised Right of First Offering Notice (“Second Election Notice”). If the parties do not agree to the ROFO Market Rent during such seven (7)-business day period, then Tenant shall by the end of the seven (7)-business day period deliver the Second Election Notice to Landlord, except that Tenant shall either elect in such Second Election Notice to exercise Tenant’s Right of First Offering to lease all of the Right of First Offering Space on the terms set forth in the original Right of First Offering Notice, or refuse to lease the same. Failure of Tenant to deliver the Second Election Notice within such seven business-day period shall be deemed a refusal to lease such Right of First Offering Space. If Tenant refuses, or is deemed to have refused, to lease such Right of First Offering Space pursuant to this Section 26.1, then Landlord shall be free to lease the Right of First Offering Space to a third party (or parties) without regard to the Right of First Offering, and this Article XXVI shall terminate and be of no further force and effect. If Tenant properly exercises its Right of First Offering, Tenant’s Right of First Offering shall continue to apply to the balance of the Right of First Offering Space, subject to the terms of this Article XXVI.

26.1.1 Limitations. Landlord and Tenant acknowledge and agree that the entire Right of First Offering Space is currently vacant and that this Right of First Offering shall not apply until such currently vacant Right of First Offering Space is leased and subsequently becomes vacant. The Right of First Offering is also subject and subordinate to (a) the rights of first offer, rights of first refusal, and other expansion rights of Hewlett Packard Enterprise Company, a Delaware corporation (“HPE”) under that certain Option Rights and Competitor Restriction Agreement executed as of March 23, 2018, between Landlord, as Owner, and HPE, as Tenant, (“HPE Expansion Rights”) and (b) the right of Landlord to renew or extend the term of any of the following leases or subleases (whether or not, the renewal or extension is on the exact terms contained in the applicable tenant’s lease, subtenant’s sublease or consummated pursuant to a lease amendment or a new lease and regardless of whether such lease or sublease contained a written renewal option) (“Other Tenant Renewal Rights”): (i) each and any initial lease of all or any portion of the Right of First Offering Space entered into after the Date of Lease and (ii) each and any lease of Right of First Offering Space entered into in connection with the HPE Expansion Rights. Such HPE Expansion Rights and Other Tenant Renewal Rights are, collectively, referred to as “Senior Rights”.

26.1.2 Lease Amendment. If Tenant elects to lease the Right of First Offering Space, then Landlord and Tenant, within 10 business days after Tenant delivers to Landlord the Election Notice exercising the Right of First Offering, or, if applicable, 10 business days after Tenant delivers the Second Election Notice exercising the Right of First Offering, shall execute an amendment to this Lease which shall (i) add the applicable Right of First Offering Space to the Premises under this Lease, (ii) increase the annual Basic Rent by an amount equal to the product of the total number of Rentable Square Feet in the Right of First Offering Space, multiplied by the ROFO Market Rent for the Right of First Offering Space, as reasonably determined by Landlord and as set forth in the Right of First
Offering Notice or, if applicable, in the Revised Right of First Offering Notice, (iii) increase the annual Amenity Building Rent by an amount equal to the product of the total number of Rentable Square Feet of the Amenity Building that is allocable to the Right of First Offering Space, multiplied by the then-prevailing annual rent rate for the Amenity Building, as reasonably determined by Landlord and as set forth in the Right of First Offering Notice, (iv) increase Tenant’s Proportionate Share in direct proportion to the increase of Rentable Square Footage in the Premises as a result of said amendment, and (v) memorialize the other terms set forth in Landlord’s Right of First Offering Notice or, if applicable, in the Revised Right of First Offering Notice. Except as otherwise indicated in Landlord’s Right of First Offering Notice or, if applicable, in the Revised Right of First Offering Notice, and this Article XXVI, all of the terms and conditions contained in this Lease shall apply to the Right of First Offering Space; provided, however, Tenant shall not be entitled to any improvement allowance, moving allowance, free rent or rent abatement concession for any Right of First Offering Space, unless specifically set forth in Landlord’s Right of First Offering Notice or, if applicable, in the Revised Right of First Offering Notice. Unless otherwise set forth in Landlord’s Right of First Offering Notice, the commencement date for any Right of First Offering Space shall be 30 days after the later of (x) Tenant’s delivery to Landlord of the Election Notice exercising said Right of First Offering Space or (y) vacation of such Right of First Offering Space by the previous tenant; provided, however, in the event Tenant actually occupies any portion of the Right of First Offering Space prior to such date for the conduct of its business, the commencement date shall be the earlier date upon which Tenant occupies such Right of First Offering Space.

26.2 Condition of Premises. Tenant shall accept any Right of First Offering Space in “as is” condition as of the date of any election to lease such space hereunder, except as may be provided in the Right of First Offering Notice.

26.3 Conditions Precedent. Tenant’s Right of First Offering and Landlord’s obligation to deliver the Right of First Offering Notice or, if applicable, the Revised Right of First Offering Notice, are expressly subject to the following conditions precedent: (i) this Lease is in full force and effect; (ii) Tenant meets or exceeds the Minimum Credit Standards, and proof satisfactory to Landlord that such Minimum Credit Standards have been met shall be delivered to Landlord with Tenant’s delivery of the Election Notice, (iii) no Event of Default exists or would exist but for the pendency of any cure periods provided for in Section 20.1 at the time Tenant delivers the Election Notice, or, if applicable, the Second Election Notice, to Landlord exercising the Right of First Offering; and (iv) at least one (1) Lease Year remains in the Term or Tenant has timely exercised the applicable Renewal Option.

26.4 Holdover. Landlord shall not be liable for the failure to give possession of any Right of First Offering Space to Tenant by reason of the unauthorized holding over or retention of possession by any other tenant or occupant thereof, and no such failure shall impair the validity of this Lease or extend the Term thereof.

26.5 Personal Right. The Right of First Offering is personal with respect to MCAFEE, LLC, a Delaware limited liability company and either a Related Entity to whom this Lease is assigned in accordance with Section 10.4 or an assignee to whom this Lease is assigned pursuant to an Ownership Transfer made in accordance with Section 10.5. Any assignment of the Lease or
subletting of any portion of the Premises other than to a Related Entity in accordance with Section 10.4 or pursuant to an Ownership Transfer in accordance with Section 10.5 shall automatically terminate MCAFEE, LLC, a Delaware limited liability company’s rights under this Article XXVI. Time is of the essence with respect to the provisions of this Article XXVI.

XXVII. RESTRICTIONS ON COMPETITORS

For purposes of this Article XXVII, “Competitors” shall mean Forcepoint, LLC; Palo Alto Networks, Inc.; Symantec Corporation; and ForeScout Technologies, Inc.; provided that such entity is in actual business competition with Tenant. During the Term, Landlord will not, without the prior written consent of Tenant, enter into any direct lease or license of space on any of the floors of the Building with a Competitor. Notwithstanding the foregoing, the restrictions in this Article XXVII will terminate automatically if (i) Landlord terminates this Lease or Tenant’s right to possession of the Premises upon the occurrence of an Event of Default; (ii) the entire Fifth & Sixth Floor Premises ceases to be occupied by MCAFEE, LLC, a Delaware limited liability company, or its Related Entity pursuant to an assignment or sublease made in accordance with Section 10.4, or its assignee pursuant to an Ownership Transfer made in accordance with Section 10.5; (iii) Tenant terminates this Lease prior to the Expiration Date; or (iv) MCAFEE, LLC, a Delaware limited liability company assigns this Lease or sublets any portion of the Fifth & Sixth Floor other than to a Related Entity in accordance with Section 10.4 or its assignee pursuant to an Ownership Transfer in accordance with Section 10.5.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Date of Lease.

**TENANT:**
MCAFEE, LLC,
a Delaware limited liability company
By: /s/ Michael Berry
Name: Michael Berry
Title: Chief Financial Officer
Date: 

**Landlord:**
US ER AMERICA CENTER 4, LLC,
a California limited liability company
By: US America Center 3 & 4 Development JV, LLC, a Delaware limited liability company, its sole and managing member
By: SW AC GP, LLC,
a Delaware limited liability company, its managing member
By: SteelWave, LLC,
a Delaware limited liability company, its managing member
By: /s/ Rick Wada
Name: Rick Wada
Title: Vice President
Date: April 10, 2019
EXHIBIT A-1

SITE PLAN SHOWING BUILDING 4 AND PROJECT
LEGAL DESCRIPTION OF LAND

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

LOT ONE: (FEE SIMPLE)
ALL OF LOT ONE, AS SHOWN ON THAT CERTAIN MAP ENTITLED “TRACT NO. 10003 AMERICA CENTER”, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 22, 2008, IN BOOK 829 OF MAPS AT PAGES 39 TO 45, INCLUSIVE.

IN ADDITION THERETO, THE FOLLOWING AREA:

BEGINNING AT THE COMMON CORNER OF SAID LOT ONE AND LOT FOUR OF SAID TRACT MAP, WHICH CORNER IS THE EASTERLY TERMINUS OF THE COURSE AND DISTANCE SHOWN AS “SOUTH 53° 29’ 51” WEST, 243.20 FEET.”

THENCE LEAVING SAID POINT OF BEGINNING THE FOLLOWING FIVE (5) COURSES AND DISTANCES:
1. EASTERNLY ALONG THE PROLONGATION OF SAID LINE, NORTH 53° 29’ 51” EAST, 60.00 FEET;
2. SOUTH 36° 30’ 09” EAST, 135.50 FEET;
3. NORTH 53° 29’ 51” EAST, 63.00 FEET;
4. SOUTH 36° 30’ 09” EAST, 125.26 FEET;
5. SOUTH 53° 29’ 51” WEST, 123.00 FEET TO THE COMMON LINE OF SAID LOT ONE AND SAID LOT FOUR;

THENCE NORTHERLY ALONG SAID COMMON LINE, NORTH 36° 30’ 09” WEST, 260.76 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS PARCEL A ON THE LOT LINE ADJUSTMENT PERMIT, FILE NO. AT 12-006, WHICH IS ATTACHED AS EXHIBIT B TO THE GRANT DEED RECORDED ON APRIL 30, 2012 AS INSTRUMENT NO. 21644400 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

EXCEPTING THEREFROM ALL RIGHTS FOR WATER SUPPLY PURPOSES AND TO PUMP, TAKE OR OTHERWISE EXTRACT WATER FROM ANY SOURCES INCLUDING, BUT NOT LIMITED TO, THE UNDERGROUND BASIN OR ANY UNDERGROUND STRATA, PROVIDED, HOWEVER THAT NOTHING CONTAINED IN SAID INSTRUMENT SHALL BE DEEMED TO AUTHORIZE GRANTEE TO PUMP, TAKE OR OTHERWISE EXTRACT WATER THROUGH THE SURFACE OF THE REAL PROPERTY, AS

-1-
DESCRIBED IN THAT QUITCLAIM DEED AND AUTHORIZATION FROM LEGACY III AMERICA CENTER I, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED MARCH 13, 2009 AS INSTRUMENT NO. 20169095 OF OFFICIAL RECORDS.

LOT 2: (FEE SIMPLE)
ALL OF LOT TWO, AS SHOWN ON THAT CERTAIN MAP ENTITLED “TRACT NO. 10003 AMERICA CENTER”, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 22, 2008, IN BOOK 829 OF MAPS AT PAGES 39 TO 45, INCLUSIVE.

EXCEPTING THEREFROM, THE FOLLOWING AREA:
BEGINNING AT THE COMMON CORNER OF SAID LOT TWO AND LOT THREE OF SAID TRACT MAP, WHICH CORNER IS THE NORTHERLY TERMINUS OF THE COURSE AND DISTANCE SHOWN AS “NORTH 36° 30’ 09” WEST, 220.91 FEET.”

THENCE LEAVING SAID POINT OF BEGINNING THE FOLLOWING FOUR (4) COURSES AND DISTANCES:
1. NORTHERLY ALONG THE PROLONGATION OF SAID LINE, NORTH 36°30’09” WEST, 30.75 FEET;
2. NORTH 53° 29’ 51” EAST, 270.00 FEET;
3. NORTH 36° 30’ 09” WEST, 53.25 FEET;
4. NORTH 53° 29’ 51” EAST, 60.00 FEET TO THE COMMON LINE OF SAID LOT TWO AND LOT THREE;

THENCE ALONG SAID COMMON LINE THE FOLLOWING TWO (2) COURSES AND DISTANCES:
1. SOUTH 36° 30’ 09” EAST, 84.00 FEET;
2. SOUTH 53° 29’ 51” WEST, 330.00 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS PARCEL D ON THE LOT LINE ADJUSTMENT PERMIT, FILE NO. AT 12-006, WHICH IS ATTACHED AS EXHIBIT B TO THE GRANT DEED RECORDED ON APRIL 30, 2012 AS INSTRUMENT NO. 21644400 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

EXCEPTING THEREFROM ALL RIGHTS FOR WATER SUPPLY PURPOSES AND TO PUMP, TAKE OR OTHERWISE EXTRACT WATER FROM ANY SOURCES INCLUDING, BUT NOT LIMITED TO, THE UNDERGROUND BASIN OR ANY UNDERGROUND STRATA, PROVIDED, HOWEVER THAT NOTHING CONTAINED IN SAID INSTRUMENT SHALL BE DEEMED TO AUTHORIZE GRANTEE TO PUMP, TAKE OR OTHERWISE EXTRACT WATER THROUGH THE SURFACE OF THE REAL PROPERTY, AS
DESCRIBED IN THAT QUITCLAIM DEED AND AUTHORIZATION FROM LEGACY III AMERICA CENTER I, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED MARCH 13, 2009 AS INSTRUMENT NO. 20169095 OF OFFICIAL RECORDS.

LOT THREE: (FEE SIMPLE)
ALL OF LOT THREE, AS SHOWN ON THAT CERTAIN MAP ENTITLED “TRACT NO. 10003 AMERICA CENTER”, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 22, 2008, IN BOOK 829 OF MAPS AT PAGES 39 TO 45, INCLUSIVE.

IN ADDITION THERETO, THE FOLLOWING AREA:
BEGINNING AT THE COMMON CORNER OF LOT TWO AND SAID LOT THREE OF SAID TRACT MAP, WHICH CORNER IS THE NORTHERLY TERMINUS OF THE COURSE AND DISTANCE SHOWN AS “NORTH 36° 30’ 09” WEST, 220.91 FEET.”

THENCE LEAVING SAID POINT OF BEGINNING THE FOLLOWING FOUR (4) COURSES AND DISTANCES:
1. NORTHERLY ALONG THE PROLONGATION OF SAID LINE, NORTH 36°30’ 09” WEST, 30.75 FEET;
2. NORTH 53° 29’ 51” EAST, 270.00 FEET;
3. NORTH 36° 30’ 09” WEST, 53.25 FEET;
4. NORTH 53° 29’ 51” EAST, 60.00 FEET TO THE COMMON LINE OF SAID LOT TWO AND LOT THREE;

THENCE ALONG SAID COMMON LINE THE FOLLOWING TWO (2) COURSES AND DISTANCES:
1. SOUTH 36° 30’ 09” EAST, 84.00 FEET;
2. SOUTH 53° 29’ 51” WEST, 330.00 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS PARCEL C ON THE LOT LINE ADJUSTMENT PERMIT, FILE NO. AT 12-006, WHICH IS ATTACHED AS EXHIBIT B TO THE GRANT DEED RECORDED ON APRIL 30, 2012 AS INSTRUMENT NO. 21644398 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

EXCEPTING THEREFROM ALL RIGHTS FOR WATER SUPPLY PURPOSES AND TO PUMP, TAKE OR OTHERWISE EXTRACT WATER FROM ANY SOURCES INCLUDING, BUT NOT LIMITED TO, THE UNDERGROUND BASIN OR ANY UNDERGROUND STRATA, PROVIDED, HOWEVER THAT NOTHING CONTAINED IN SAID INSTRUMENT SHALL BE DEEMED TO AUTHORIZE GRANTEE TO PUMP, TAKE OR OTHERWISE EXTRACT WATER THROUGH THE SURFACE OF THE REAL PROPERTY, AS
DESCRIBED IN THAT QUITCLAIM DEED AND AUTHORIZATION FROM LEGACY III AMERICA CENTER II, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED MARCH 06, 2009 AS DOCUMENT NO. 20159266 OF OFFICIAL RECORDS.

LOT FOUR: (FEE SIMPLE)
ALL OF LOT FOUR, AS SHOWN ON THAT CERTAIN MAP ENTITLED “TRACT NO. 10003 AMERICA CENTER”, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 22, 2008, IN BOOK 829 OF MAPS AT PAGES 39 TO 45, INCLUSIVE.

EXCEPTING THEREFROM, THE FOLLOWING AREA:
BEGINNING AT THE COMMON CORNER OF SAID LOT ONE AND LOT FOUR OF SAID TRACT MAP, WHICH CORNER IS THE EASTERLY TERMINUS OF THE COURSE AND DISTANCE SHOWN AS “SOUTH 53°29’51” WEST, 243.20 FEET.”

THENCE LEAVING SAID POINT OF BEGINNING THE FOLLOWING FIVE (5) COURSES AND DISTANCES:
1.    EASTERNLY ALONG THE PROLONGATION OF SAID LINE, NORTH 53°29’51” EAST, 60.00 FEET;
2.    SOUTH 36°30’09” EAST, 135.50 FEET;
3.    NORTH 53°29’51” EAST, 63.00 FEET;
4.    SOUTH 36°30’09” EAST, 125.26 FEET;
5.    SOUTH 53°29’51” WEST, 123.00 FEET TO THE COMMON LINE OF SAID LOT ONE AND SAID LOT FOUR;

THENCE NORTHERLY ALONG SAID COMMON LINE, NORTH 36°30’09” WEST, 260.76 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS PARCEL B ON THE LOT LINE ADJUSTMENT PERMIT, FILE NO. AT 12-006, WHICH IS ATTACHED AS EXHIBIT B TO THE GRANT DEED RECORDED ON APRIL 30, 2012 AS INSTRUMENT NO. 21644398 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

EXCEPTING THEREFROM ALL RIGHTS FOR WATER SUPPLY PURPOSES AND TO PUMP, TAKE OR OTHERWISE EXTRACT WATER FROM ANY SOURCES INCLUDING, BUT NOT LIMITED TO, THE UNDERGROUND BASIN OR ANY UNDERGROUND STRATA, PROVIDED, HOWEVER THAT NOTHING CONTAINED IN SAID INSTRUMENT SHALL BE DEEMED TO AUTHORIZE GRANTEE TO PUMP, TAKE OR OTHERWISE EXTRACT WATER THROUGH THE SURFACE OF THE REAL PROPERTY, AS DESCRIBED IN THAT QUITCLAIM DEED AND AUTHORIZATION FROM LEGACY III AMERICA CENTER II, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED MARCH 6, 2009 AS DOCUMENT NO. 20159266 OF OFFICIAL RECORDS.

-4-
EASEMENT ESTATES:

PARCEL ONE-A:
A NON-EXCLUSIVE APPURTENANT EASEMENT FOR THE PURPOSES OF PUBLIC AND PRIVATE UTILITIES, AS CONVEYED BY GRANT OF EASEMENT FROM EXTENDED STAY CA, INC., A DELAWARE CORPORATION, RECORDED AUGUST 21, 2001 AS INSTRUMENT NO. 15835965 OF OFFICIAL RECORDS.

PARCEL ONE-B:
A NON-EXCLUSIVE APPURTENANT EASEMENT FOR A PEDESTRIAN SIDEWALK AND BICYCLE WAY, AS RESERVED BY WCSJ LLC, A DELAWARE LIMITED LIABILITY COMPANY IN THAT CERTAIN GRANT DEED RECORDED MAY 21, 2003 AS INSTRUMENT NO. 17056610 OF OFFICIAL RECORDS.

PARCEL ONE-C:
A NON-EXCLUSIVE APPURTENANT EASEMENT FOR THE PURPOSES OF PUBLIC AND PRIVATE UTILITIES, AS CONVEYED BY GRANT DEED OF EASEMENT FROM LINCOLN 237 ASSOCIATES LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP, RECORDED DECEMBER 10, 2003 AS INSTRUMENT NO. 17520865 OF OFFICIAL RECORDS.

PARCEL ONE-D:
A NON-EXCLUSIVE APPURTENANT EASEMENT FOR THE PURPOSES OF STORM WATER DRAINAGE, AS CONVEYED BY GRANT DEED OF EASEMENT FROM LINCOLN 237 ASSOCIATES LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP, AND UPON THE TERMS CONTAINED THEREIN, RECORDED DECEMBER 10, 2003 AS INSTRUMENT NO. 17520866 OF OFFICIAL RECORDS.

SAID EASEMENT HAS BEEN MODIFIED BY DOCUMENT ENTITLED “FIRST AMENDMENT TO GRANT DEED OF EASEMENT”, RECORDED DECEMBER 01, 2004 AS INSTRUMENT NO. 18122284 OF OFFICIAL RECORDS.

PARCEL ONE-E:
A PERPETUAL NON-EXCLUSIVE APPURTENANT EASEMENT FOR THE PURPOSES OF EMERGENCY ACCESS TO AND EGRESS TO GOLD STREET, INSTALLATION OF UTILITIES, AND INSTALLATION AND MAINTENANCE OF UTILITY FACILITIES, AS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED “RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT AND COVENANT TO PERFORM OBLIGATIONS”, RECORDED MAY 21, 2003 AS INSTRUMENT NO. 17056611 OF OFFICIAL RECORDS, AS AMENDED BY DOCUMENTS RECORDED DECEMBER 1, 2004 AS INSTRUMENT NO. 18122282 OF OFFICIAL RECORDS AND OCTOBER 31, 2006 AS INSTRUMENT NO. 19163509 OF OFFICIAL RECORDS.
PARCEL ONE-F:
EASEMENTS NOT ON LOT ONE, TWO, THREE OR FOUR AS CONVEYED BY AND DESCRIBED IN THAT CERTAIN DECLARATION AND AGREEMENT OF COVENANTS AND RESTRICTIONS OF AMERICA CENTER RECORDED DECEMBER 22, 2008, AS INSTRUMENT NO. 20074383 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

PARCEL ONE-G:
A NON-EXCLUSIVE EASEMENT FOR PURPOSES OF VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS, AS CONVEYED BY AND DESCRIBED IN THAT CERTAIN COMMON PRIVATE ROADWAY EASEMENT AGREEMENT RECORDED DECEMBER 22, 2008, AS INSTRUMENT NO. 20074384 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

AS TO LOTS ONE AND FOUR ONLY, PARCEL ONE-H:
A NON-EXCLUSIVE EASEMENT FOR PURPOSES OF VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS, AS CONVEYED BY AND DESCRIBED IN THAT CERTAIN “AMENDED AND RESTATED INGRESS/EGRESS EASEMENT AGREEMENT” RECORDED MAY 31, 2012, AS INSTRUMENT NO. 21690173 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

PARCEL ONE-I:
ALL EASEMENTS NOT ON LOT ONE, TWO, THREE OR FOUR AS SHOWN ON THAT CERTAIN MAP ENTITLED “TRACT MAP NO. 10003 AMERICA CENTER” WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 22, 2008 IN BOOK 829 OF MAPS AT PAGES 39 TO 45, INCLUSIVE FOR EMERGENCY ACCESS, PRIVATE INGRESS AND EGRESS, PRIVATE STORM DRAINAGE, PRIVATE UTILITY, PRIVATE WATER LINE, AND PRIVATE STREETS SHOWN AS AMERICA CENTER COURT AND AMERICA CENTER DRIVE.

PARCEL ONE-J:
A NON-EXCLUSIVE APPURTENANT EASEMENT FOR INGRESS, EGRESS AND UTILITIES (BOTH PUBLIC AND PRIVATE) AS CONVEYED AND DESCRIBED AS PARCEL SIX IN THE GRANT DEED FROM CARGILL, INCORPORATED, A DELAWARE CORPORATION AND CARGILL, AS SUCCESSOR BY MERGER TO LESLIE SALT CO. TO WCSJ LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED OCTOBER 11, 2008 AS INSTRUMENT NO. 15419129 OF OFFICIAL RECORDS.
AS TO LOTS TWO AND THREE ONLY, PARCEL ONE-K:

A NON-EXCLUSIVE APPURTENANT EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS, AS SET FORTH IN THAT CERTAIN RECIPROCAL INGRESS/EGRESS EASEMENT AGREEMENT RECORDED MAY 31, 2012 AS INSTRUMENT NO. 21690174 OF OFFICIAL RECORDS.

AS TO LOT FOUR ONLY, PARCEL ONE-L:

A NON-EXCLUSIVE EASEMENT FOR PARKING, TOGETHER WITH RIGHTS OF INGRESS AND EGRESS THERETO, OVER THAT PORTION OF LOT THREE OF SAID TRACT 10003 AS CONTAINED IN THAT CERTAIN DOCUMENT ENTITLED, "COVENANT OF EASEMENT", RECORDED DECEMBER 22, 2008 AS INSTRUMENT NO. 20074386 OF OFFICIAL RECORDS.
EXHIBIT B-1

WORK AGREEMENT

This Work Agreement (the “Work Agreement”) is attached to and made a part of that certain Office Lease (“Lease”) executed concurrently herewith by and between US ER AMERICA CENTER 2, LLC, a California limited liability company (“Landlord”), and MCAFEE, LLC, a Delaware limited liability company (“Tenant”). The terms used in this Work Agreement that are defined in the Lease shall have the same meanings as provided in the Lease.

1. General

   1.1 Purpose. This Work Agreement sets forth the terms and conditions governing Tenant’s design, permitting and construction of tenant improvements to be installed in the Premises (the “Tenant Work”), Landlord and Tenant agree that this Work Agreement is not a construction contract and is merely one part of the Lease, which contains the overall agreement concerning Tenant’s use and occupancy of the Premises.

   1.2 Construction Representatives. Landlord hereby appoints and Tenant hereby approves the following person as Landlord’s representative (“Landlord’s Representative”) to act for Landlord in all matters regarding the Tenant Work and Tenant hereby appoints and Landlord hereby approves the following person as Tenant’s representative (“Tenant’s Representative”) to act for Tenant in all matters regarding the Tenant Work:

<table>
<thead>
<tr>
<th>Landlord’s Representative</th>
<th>Tenant’s Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stacy McClaughry</td>
<td>Robert Peralta</td>
</tr>
<tr>
<td>SteelWave, LLC</td>
<td>McAfee, LLC</td>
</tr>
<tr>
<td>999 Baker Way, Suite 200</td>
<td>5000 Headquarter Dr.</td>
</tr>
<tr>
<td>San Mateo, CA 94404</td>
<td>Plano, TX 75024</td>
</tr>
</tbody>
</table>

All inquiries, requests, instructions, authorizations or other communications with respect to the Tenant Work shall be made to Landlord’s Representative or Tenant’s Representative, as the case may be. Authorizations made by Tenant’s Representative shall be binding and Tenant shall be responsible for all costs and actions authorized by Tenant’s Representative. Either party may change its representative at any time by written notice to the other party. Landlord shall not be obligated to respond to or act upon any plan, drawing, change order approval or other matter relating to the Tenant Work until it has been executed by Tenant’s Representative.

-1-
2. Tenant Work Allowance.

2.1 Allowance for Tenant Work. Tenant shall receive as a credit against the actual Cost of the Tenant Work (as defined in this Paragraph) an amount up to $6,741,840.00 (the “Tenant Work Allowance”); provided, however, except as expressly provided in this Paragraph 2.1, the Tenant Work Allowance shall not be available for any portion of the Cost of the Tenant Work applicable to the purchase or installation of trade fixtures, equipment, furniture, furnishings, telephone and data equipment, Cabling, or other personal property, including, without limitation, any demountable walls that constitute movable systems. Landlord shall pay the Tenant Work Allowance directly to Tenant or, at Tenant’s option, to Tenant's architect or Tenant's general contractor, as the case may be. All costs of the Tenant Work in excess of the Tenant Work Allowance (“Tenant’s Contribution”) shall be payable by Tenant. The Tenant Work Allowance will be released in installments pro-rata with Tenant’s Contribution, based upon the proportion of the Cost of the Tenant Work that will be paid by the Tenant Work Allowance and the proportion of the Cost of the Tenant Work that will be paid by the Tenant’s Contribution. With each request for release of the Tenant Work Allowance, Tenant must provide Landlord with Tenant’s certification that the Tenant Work can be completed for the remaining pro-rata balance of the Tenant Contribution and Tenant Work Allowance “In-Balance Certification”). If for any reason Tenant cannot deliver the In-Balance Certification, Tenant shall modify the Project Budget (as defined in Paragraph 3.2) and increase Tenant’s Contribution, modify Tenant’s Work, re-bid elements of Tenant’s Work or take other actions so as to allow Tenant to issue the In-Balance Certification. Landlord may withhold release of the Tenant Work Allowance at any time that Tenant cannot deliver the In-Balance Certification until final completion of the Tenant Work. Upon final completion of the Tenant Work, Landlord will pay any unutilized portion of the Tenant Work Allowance to Tenant, subject to terms of Paragraph 2.2. “Cost of the Tenant Work” means all costs to be expended in connection with the construction of the Tenant Work, including but not limited to the following: (i) architectural and engineering fees incurred in connection with the preparation of the Tenant’s Plans (as defined in Paragraph 3.1); (ii) governmental agency plan check, permit and other fees (including any changes required by any governmental entity or authority having jurisdiction thereof); (iii) sales and use taxes, if any; (iv) insurance fees associated with the construction of the Tenant Work; (v) testing and inspecting costs; and (vi) the actual costs and charges for material and labor, contractor’s profit and contractor’s general overhead incurred in constructing the Tenant Work, plus Landlord’s administrative fee, which shall be three percent (3%) of the Tenant Work Allowance, unless SteelWave CDS, Inc. is selected as the general contractor pursuant to Paragraph 4, in which case Landlord will waive such administrative fee. The Tenant Work Allowance shall be available to Tenant through the date that is 18 months after the Date of Lease (“Allowance Deadline”). Landlord shall have no obligation to pay, reimburse or allow Tenant any right of offset to the extent of any unspent portion of the Tenant Work Allowance remaining on the Allowance Deadline.
Disbursement of Tenant Work Allowance for Tenant Work. Except as otherwise set forth herein, Landlord shall disburse portions of the Tenant Work Allowance by check once each month during the period of Tenant’s construction of the Tenant Work, commencing no sooner than thirty (30) calendar days after Tenant commences construction of the Tenant Work and provides Landlord written notice of such commencement of construction. The regular monthly Tenant Work Allowance disbursement date (the “Disbursement Date”) shall be the thirtieth (30th) day of each month.

No later than the fifteenth (15th) day of each month, Tenant shall deliver to Landlord a request for payment in form and content reasonably acceptable to Landlord which shall include, without limitation, (i) a certification by Tenant and Tenant’s architect of the percentage of completion of the Tenant Work; (ii) an itemization of the costs paid by Tenant’s Contribution until Tenant’s Contribution has been fully paid, together with invoices therefor; (iii) an itemization of new costs, together with invoices therefor, incurred by Tenant and not previously reimbursed by Landlord; (iv) unconditional lien waivers from all contractors and suppliers for all preceding payments (including the payment of Tenant’s Contribution) in the form required by California law and reasonably approved by Landlord, and conditional lien waivers from all contractors and suppliers for the current month’s requested payment (including the payment of Tenant’s Contribution) in the form required by California law and reasonably approved by Landlord; and (v) the In-Balance Certification. If Tenant fails to timely deliver the required information, Landlord shall disburse the Tenant Work Allowance to Tenant on or before the next following Disbursement Date, provided that Tenant has delivered the required information and except as otherwise provided under Paragraph 2.1 if Tenant is unable to deliver the In-Balance Certification.

On the Disbursement Date, Landlord shall disburse to Tenant a sum equal to the lesser of (i) “Landlord’s Share” (as hereinafter defined) less a ten percent (10%) retention; or (ii) the balance of any remaining available portion of the Tenant Work Allowance less a ten percent (10%) retention. “Landlord’s Share” shall mean a sum equal to the product obtained by multiplying the Tenant Work Allowance by the percentage of Tenant Work completed from the last Tenant’s architect certification date (including the certification date applicable to the portion of the Cost of the Tenant Work paid through Tenant’s Contribution), as such additional percentage is verified by Landlord, and as adjusted based on the In-Balance Certification in order that Landlord’s Share is released pro-rata with Tenant’s Contribution. Landlord shall have the right to withhold from any such disbursement of Landlord’s Share such amount as Landlord reasonably deems necessary to account for items of Tenant Work which are not acceptable in Landlord’s reasonable discretion. Disbursement by Landlord of a portion of the Tenant Work Allowance shall not be deemed to constitute a representation or warranty by Landlord that such work complies with the Tenant Plans (as hereinafter defined) or any governmental law, code or regulation and no third party may rely on such disbursement as evidence that the Tenant Work complies with same.
The sums retained by Landlord from each request for payment and the final installment payment of Landlord’s Share shall be paid by Landlord to Tenant within thirty (30) calendar days after the last to occur of: (i) final completion and acceptance of the Tenant Work by Landlord’s Representative after completion of all Punch-List Items (as defined in Paragraph 9); (ii) acceptance of the Tenant Work by all governmental agencies having authority therefore and issuance of a final unconditional certificate of occupancy; (iii) Tenant’s filing of a notice of completion in the form required by California law and reasonably approved by Landlord; (iv) delivery to Landlord of final unconditional mechanic’s lien releases from Tenant’s subcontractors, laborers, materialmen and suppliers with respect to the Tenant Work in the form required by California law and reasonably approved by Landlord; (v) Tenant’s delivery to Landlord of evidence of costs incurred in a form reasonably acceptable to Landlord; and (vi) Tenant’s delivery to Landlord of all contracts, warranties (including, without limitation, for labor, materials and equipment), operating manuals, descriptions and instructions for all equipment and systems, and a full set of final “as built” Construction Drawings and Specifications.

If a Lien is recorded against the Building or the Project or any stop notices are served on Landlord during the course of and in connection with the Tenant Work, then Landlord shall have the right to withhold from the Tenant Work Allowance a sum equal to one hundred twenty five percent (125%) of the claimed or disputed amount. Landlord shall have the right to make payment of the claimed or disputed sum directly to the claimant to cause the release of any Lien where said Lien has not been removed by the recordation of either a release of mechanic’s lien or a statutory lien release bond issued by a corporate surety reasonably acceptable to Landlord within ten (10) business days following the date Tenant receives notice of filing or delivery of the Lien.

3. Design and Schedule.

3.1 Tenant Plans for Tenant Work.

(a) Space Plan: The “Space Plan” as used herein shall mean a plan containing, among other things, a partition layout, door location and system furniture located in key spaces within the Premises. Landlord shall be responsible for the cost of Tenant’s initial test fit, up to but not exceeding $10,112.76, which cost shall be in addition to, and not a part of, the Tenant Work Allowance. Landlord shall pay such cost directly to Tenant’s architect within 30 days after Landlord’s receipt of the invoice for such test-fit.

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Construction Drawings and Specifications: The "Construction Drawings and Specifications" as used herein shall mean the construction working drawings, the mechanical, electrical and other technical specifications, and the finishing details, including wall finishes and colors and technical and mechanical equipment installation, if any, all of which details the installation of the Tenant Work in the Premises sufficient for obtaining a building permit. The Construction Drawings and Specifications shall:

(i) be compatible with the Building shell, and with the design, construction and equipment of the Building;

(ii) comply with all applicable laws, codes and ordinances including the ADA, and the rules and regulations of all governmental authorities having jurisdiction over the Project;

(iii) comply with all applicable insurance regulations and the requirements of the Board of Underwriters for a fire resistant Class A building;

(iv) include locations of all Tenant Work including complete dimensions and provide for Tenant Work to fully build-out the entire Premises; and

(v) conform to Landlord’s Building standard specifications attached as Exhibit B-2 ("Specifications") unless Landlord approves deviations from such Specifications in Landlord’s sole discretion.

(c) Except as specified by Landlord pursuant to Paragraph 8 hereof, all Tenant Work, whether covered by the Tenant Work Allowance or not, including, without limitation, Tenant Work which is permanently affixed to the Premises or alters the operational systems of the Building shall become the property of Landlord upon expiration or earlier termination of the Lease and shall remain on the Premises at all times during the Term.

The Space Plan and Construction Drawings and Specifications are collectively referred to as the “Tenant Plans.”

3.2 Approvals by Landlord. Landlord has approved the following architects as Tenant’s architect: AP+I Design, NELSON, M Moser Associates, Ware Malcomb, RMW. If Tenant engages any other architect or engineers separately from the approved architects as Tenant’s engineer to generate the mechanical, electrical and plumbing plans, then such architects and engineers, as applicable, shall be subject to Landlord’s approval, which shall not be unreasonably withheld, conditioned or delayed. If Tenant desires to engage a different architect or engineer than those pre-approved in this Paragraph 3.2, then Landlord’s approval shall be required, but shall not be unreasonably withheld, conditioned or delayed. Tenant and Landlord have approved the Space Plan for the Fifth & Sixth Floor Premises attached as Exhibit B-4. All Tenant Plans, including, without limitation, the Space Plan for the First Floor Premises, for the Tenant Work shall be subject to Landlord’s prior written approval, which shall not be unreasonably withheld, except that Landlord shall have complete discretion with regard to granting or withholding approval of (a) all light fixtures, entry doors, interior doors, HVAC diffusers and demountable walls included in the Tenant Plans or (b) to the extent the Tenant Work included in the Tenant Plans (i) impacts the Building’s structure or systems, (ii) affects future marketability of the Building, (iii) would be visible from the
Common Areas or the exterior of the Building, (iv) is inconsistent with use of the Premises as a class A office building, or (v) does not fully build-out the entire Premises. Any changes, additions or modifications that Tenant desires to make to the Tenant Plans also shall be subject to Landlord’s prior written approval, which shall not be unreasonably withheld except as provided above for Building structure, system, marketability or appearance impact. The contract with Tenant’s general contractor shall be subject to Landlord’s prior written approval, which shall not be unreasonably withheld, except that Landlord shall have the right to withhold its approval in the event that the contract does not contain a budget for the Tenant Work ("Project Budget"), a written construction schedule (the “Written Construction Schedule”) and a staging plan that identifies where in the Surface Lot and other Common Area located on the Land on which the Building is located that such general contractor will place its vehicles, equipment, materials, supplies or other property, to the extent not stored in the Building (“Staging Plan”). For purposes of this Work Letter, at any time that the prior written approval of the Landlord is required, Landlord’s approval or disapproval shall be given within 10 business days after receipt of such request, accompanied with the reasons for Landlord’s disapproval, if applicable.

3.3 Course of Construction. If the course of construction of the Tenant Work as set forth in the Written Construction Schedule is delayed for a time period equal to or greater than two weeks, then Landlord shall have the right to require a meeting with Tenant’s general contractor and appropriate consultants.

4. Construction of Tenant Work. Following Landlord’s final approval of the Tenant Plans, Tenant shall use commercially reasonable efforts to obtain all building and other governmentally required permits within 60 days after Landlord’s approval. Following Tenant’s satisfaction of the conditions set forth in this Paragraph 4, Tenant shall commence and diligently proceed with the construction of the Tenant Work in accordance with the Written Construction Schedule. Landlord and Tenant acknowledge that Tenant shall hire its own general contractor or contractors to complete the Tenant Work in accordance with this Work Agreement. The Tenant Work shall be conducted with due diligence, in a good and workmanlike manner befitting a first class office building, and in accordance with the Tenant Plans, the Lease, this Work Agreement and all applicable laws, codes, ordinances and rules and regulations of all governmental authorities having jurisdiction.

In addition to Tenant’s indemnity obligations under the Lease, Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any and all Claims for personal or bodily injury and property damage that may arise from the performance of the Tenant Work, whether resulting from the negligence or willful misconduct of its general contractors, subcontractors or their respective Agents. Tenant and its contractors and subcontractors shall execute such additional documents as Landlord deems reasonably appropriate to evidence said indemnity and in order to indemnify, protect, hold harmless and defend (by counsel acceptable to Landlord) Landlord, its affiliates and each of their respective Agents, successors and assigns, from and against any and all claims, damages, penalties, fines, liabilities and cost (including reasonable attorneys’ fees and court costs) to the extent caused by or arising out of (i) a violation of the prohibitions set forth in
Notwithstanding the foregoing, Tenant shall not commence the Tenant Work until Tenant has delivered at least 30 days’ prior written notice to Landlord and the following conditions are satisfied:

(a) **Insurance.** Prior to construction, Tenant shall provide Landlord with an original certificate and a certified copy of the policy, together with appropriate endorsement(s) and other documents, of All-Risk Builder’s Risk Insurance (the “Builder’s Risk Insurance Policy”), subject to Landlord’s reasonable approval, in the minimum amount of the replacement cost of the Tenant Work issued by a company or companies acceptable to Landlord and authorized to do business in California, covering the Premises, with premiums prepaid, and which names the Landlord as loss payee. Said policy shall insure the Tenant Work and all materials and supplies for the Tenant Work stored on the Premises (or at any other sites) against loss or damage by fire and the risks and hazards insured against by the standard form of extended coverage, and against vandalism and malicious mischief, and such other risks and hazards as Landlord may reasonably request. Said insurance coverage shall be for 100% of replacement cost, including architectural fees. The Builder’s Risk Insurance Policy shall contain a provision that the insurance company waive the rights of recovery or subrogation against the Landlord, its Agents, Mortgagee, co-tenants, co-venturers, affiliates, and their insurer.

(b) **Approved Contractors and Estimate.** Tenant shall bid for contracts for the Tenant Work from at least three (3) general contractors, including SteelWave CDS, Inc., and three (3) subcontractors, materialmen and suppliers per trade, which contractors and subcontractors shall be selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Furthermore, Landlord shall recommend one of the three (3) mechanical, electrical and plumbing subcontractors per trade from which bids are to be solicited.

(c) **Governmental Permits.** Tenant shall obtain all building permits and other appropriate permits and licenses from the appropriate agency or office of any governmental or regulatory body having jurisdiction over the Premises and which are required for the construction of the Tenant Work.

(d) **Additional Insurance.** Tenant shall provide Landlord with the required evidence of satisfaction of the insurance requirements set forth in Exhibit B-3 attached hereto in the form meeting the requirements of Exhibit B-3 attached hereto.

(e) **Accepted Contract and Bid.** Tenant’s acceptance of the general contractor’s bid shall be subject to Landlord approval, which shall not be unreasonably withheld,
conditioned or delayed if such bid is complete and representative of all the work and materials required to construct the Tenant Work. Landlord acknowledges and agrees that Tenant is not obligated to select the lowest bid. Landlord and Tenant may also consider, among other things, the amount of the bid, construction time, availability and reputation of and prior business dealings with such general contractor. Tenant shall provide Landlord with a copy of the contract entered into with the general contractor, which shall include the Project Budget, Written Construction Schedule, the indemnity agreements required under this Work Agreement, the requirement to comply with the insurance requirements set forth in Exhibit B-3 and the names of all subcontractors, materialmen and suppliers. Tenant shall further provide Landlord with a copy of the contract for the architect, engineer and other design professionals, as applicable, and the contract for other vendors involved in the execution of the Tenant Work (which may be in the form of a purchase order or work authorization).

5. **Change Orders.** If Tenant desires any change or addition to the Tenant Work after Tenant’s and Landlord’s approval of the Construction Drawings and Specifications, Tenant shall provide Landlord with a request for a “Proposal for Change”, including a change quotation containing the scope of the work, the cost, and the delay in Substantial Completion. If Landlord approves such Proposal for Change, Tenant shall issue a “Change Order”. Landlord’s approval of a Change Order shall not be unreasonably withheld, unless the Change Order involves work which, when completed, (i) could impact the Building’s structure or systems, (ii) could affect future marketability of the Building, (iii) would be visible from the Common Areas or the exterior of the Building, (iv) are inconsistent with use of the Premises as a class A office building or (v) would result in Tenant Work that does not fully build-out the entire Premises.

6. **Cooperation With Other Tenants.** Tenant shall promptly remove from the Surface Lot and other Common Areas any vehicles, equipment, materials, supplies or other property of Tenant or contractors deposited in the Surface Lot and other Common Areas during the construction of the Tenant Work. The parties recognize and acknowledge that the Tenant Work constitutes a major construction project that may require scheduling of access to the Project and Building and may cause disruption customary to comparable construction projects. Tenant will exercise reasonable care to require that its contractors adhere to the Written Construction Schedule and Staging Plan and not unreasonably disrupt or allow disruption to existing Project tenants’ parking vehicles and pedestrian access, nor allow unreasonable disruptions of mechanical, electrical, telephone and plumbing services serving any space in the Project occupied by other tenants nor unreasonably interrupt the normal business operation of any other tenant at the Project.

7. **Inspection by Landlord.** Landlord shall have the right to inspect the Tenant Work at all reasonable times upon prior notice to Tenant. Landlord’s failure to inspect the Tenant Work shall in no event constitute a waiver of any of Landlord’s rights hereunder nor shall Landlord’s inspection of the Tenant Work constitute the Landlord’s approval of same.

8. **Removal of Tenant Improvements.** Portions of the Tenant Work, as reasonably determined by Landlord to be specialized Tenant Work (including, without limitation, floor and ceiling
mounted auxiliary air conditioning units, non-building standard fire suppression/control systems, computer rooms, auditoriums, laboratories, and Cabling), shall, at the election of Landlord either be removed by Tenant at its expense before the expiration of the Term or shall remain upon the Premises and be surrendered therewith at the Expiration Date or earlier termination of this Lease as the property of Landlord without disturbance, molestation or injury. Landlord must make such election by written notice to Tenant delivered on or before the later of the date on which Landlord and Tenant approve the Construction Drawings and Specifications or applicable Change Orders. If Landlord requires the removal of all or part of said Tenant Work, Tenant, at its expense, shall repair any damage to the Premises or the Building caused by such removal and restore the Premises to its condition prior to the installation of such Tenant Work. If Tenant fails to remove said Tenant Work upon Landlord’s request, then Landlord may (but shall not be obligated to) remove the same and the cost of such removal, repair and restoration, together with any and all damages which Landlord may suffer and sustain by reason of the failure of Tenant to remove the same, shall be charged to Tenant and paid upon demand. All Cabling installed by Tenant inside any of the interior walls of the Premises, above the ceilings of the Premises, in any portion of the ceiling plenums above or below the Premises, or in any portion of the common areas, including but not limited to any of the shafts or utility rooms of the Building, shall be clearly labeled or otherwise identified as having been installed by Tenant. All Cabling installed by Tenant shall comply with the requirements of the National Electric Code and any other applicable fire and safety codes. Upon the expiration or earlier termination of this Lease, unless Landlord consents, in its sole discretion, to a request by Tenant not to remove such Cabling, Tenant shall remove all Cabling installed by Tenant anywhere in the Premises or the Building in accordance with the Lease to the point of the origin of such Cabling, and repair any damage to the Premises or the Building resulting from such removal.

9. Completion of Tenant Work. “Substantial Completion” of the Tenant Work shall be conclusively deemed to have occurred as soon as the Tenant Work to be installed by Tenant pursuant to this Work Agreement has been constructed in accordance with the approved Construction Drawings and Specifications and approved Change Orders, except for items reasonably acceptable to Landlord and Tenant, including but not limited to minor or insubstantial details of construction, decoration or mechanical adjustment, the lack of completion of which will not materially interfere with Tenant’s permitted use of the Premises (“Punch List Items”). Tenant shall notify Landlord in writing when the Tenant Work has been Substantially Completed. Landlord shall thereupon have the opportunity to inspect the Tenant Work in order to determine if the Tenant Work has been Substantially Completed and approve the identified Punch List Items. If the Tenant Work has not been Substantially Completed, Landlord shall immediately following inspection, provide Tenant with written notification of the items deemed incorrect or incomplete. Tenant shall forthwith proceed to correct the incorrect or incomplete items. Notwithstanding anything to the contrary, the Tenant Work shall not be considered suitable for review by Landlord until all designated or required governmental inspections, permits and certifications necessary for the Tenant Work, including, but not limited to final inspection by the governing jurisdiction, have been made, given and/or posted. Tenant shall complete any Punch List Items within 30 days after Substantial Completion.
10. **Third Party Beneficiary.** Tenant agrees and acknowledges that Landlord shall be included as a third party beneficiary under any and all agreements between Tenant and its contractors, together with any warranties pursuant to the same, which agreements and warranties shall be fully assignable to Landlord and permit Landlord to enforce such warranties and agreements, including, without limitation, in a court of competent jurisdiction.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Work Agreement as of the Date of Lease.

TENANT:

MCAFEE, LLC,
a Delaware limited liability company

By: /s/ Michael Berry
Name: Michael Berry
Title: Chief Financial Officer
Date: 

LANDLORD:

US ER AMERICA CENTER 4, LLC,
a California limited liability company

By: US America Center 3 & 4 Development JV, LLC, a
Delaware limited liability company,
its sole and managing member

By: SW AC GP, LLC,
a Delaware limited liability company,
its managing member

By: SteelWave, LLC,
a Delaware limited liability company,
its managing member

By: /s/ Rick Wada
Name: Rick Wada
Title: Vice President
Date: April 10, 2019
PARTITIONS

A. DEMISING PARTITION AND CORRIDOR WALLS
   1. 3-5/8" (or match existing) - 20 gauge metal studs - 24" on center maximum from floor to ceiling grid. (Provide backing for cabinet as required)
   2. 5/8” Type ‘X’ gypsum wallboard one layer each side of studs, fire taped only.
   3. Height from floor to ceiling grid.
   4. Seismic bracing per code.
   5. Two rows of continuous acoustical sealant - bottom tracks. R-l 1 batt type fiberglass insulation between studs

   Note:
   - All partitions to be paint finished on smooth surfaces GA-214, level 4 smoothness.
   - One hour rated walls where required based on occupancy group.
   - All interior 1-hour corridors to be tunnel construction in compliance with UBC requirements for one- hour fire rated assembly.

B. TYPICAL INTERIOR PARTITION (Non rated)
   1. 3-5/8” (or match existing) - 20 gauge metal studs - 24” on center maximum. (provide backing for wall mounted cabinetry or equipment as required).
   2. 5/8” Type ‘X’ gypsum wallboard one layer each side of studs.
   3. Height from floor to ceiling grid - approximately 9’-6” on floor 2-5 or 10’-0” on floors 1 &6, regular ceiling tiles must be scribed
   4. Seismic bracing per code.
   5. All exterior corners with corner beads. All exposed edges finished with metal trim.

   Note:
   - All partitions to be paint finished on smooth surfaces GA-214, level 4 smoothness.
   - Partitions must connect to building mullions or walls. Mechanical fasteners to mullions shall not be allowed.
   Tenant may utilize architectural demountable partition walls for interior partitions

C. PERIMETER DRYWALL (if necessary above glazing)
   1. 2-1/2” - 25 gauge metal studs 24” on center to 6” above suspended ceiling
   2. 5/8” Type ‘X’ gypsum wallboard one layer on one side.
   3. Height - top of glazing to 6” above ceiling grid or to underside of structure at open ceiling areas
   4. All exterior corners with corner beads.

   Note:
   - All partitions to be paint finished on smooth surfaces GA-214, level 4 smoothness.
D. COLUMN FURRING
1. 5/8" Type ‘X’ gypsum wallboard, one layer on 2 14” -25 gauge metal studs, UNO.
2. Height - floor slab to 2” above ceiling grid, full height at open ceiling areas.
3. All exterior corners with corner beads.

Note:
-All partitions to be paint finished on smooth surfaces GA-214, level 4 smoothness.

E. INSULATION
1. Insulation at all perimeter walls (if any) and roof per specifications

F. FIRE BLOCKING
1. 2-1/2” 20 Gauge metal studs.
2. 5/8” gypsum wallboard one layer on one side.
3. Height—from top of suspended ceiling to structure above as required by code.
4. Locate as required by code for the proposed tenant space plans.

G. PAINTING
1. All gypsum board walls to receive a prime coat (hi-build PVA sealer) and two (2) coats to cover of ‘carefree’ flat finish paint or equal.
2. Semi-gloss paint at all kitchens, and restrooms.

DOORS, FRAMES AND HARDWARE
A. SUITE ENTRY DOORS-FIRE RATED AS REQUIRED BY OCCUPANCY AND CODE REQUIREMENTS

<table>
<thead>
<tr>
<th>QTY</th>
<th>SUBTYPE</th>
<th>ITEM DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Hinges (4 pair per door)</td>
<td>Hager</td>
</tr>
<tr>
<td>1</td>
<td>Lockset</td>
<td>Schlage L series, 17 lever (Sparta), 626 finish, IC cylinder</td>
</tr>
<tr>
<td>1</td>
<td>Auto Flush Bolt</td>
<td>942 626 DCI</td>
</tr>
<tr>
<td>1</td>
<td>Dust Proof Strike</td>
<td>80 626 DCI</td>
</tr>
<tr>
<td>2</td>
<td>Door Stops</td>
<td>Glynn Johnson FBI3, floor dome</td>
</tr>
<tr>
<td>1</td>
<td>Closer</td>
<td>LCN #4111 (where required)</td>
</tr>
</tbody>
</table>

Tenant will make every effort to meet Landlord Suite Entry Doors specification except where Tenant security requirements cannot be met.
**B. INTERIOR GLAZING**

1. (a) 1\(\frac{1}{4}\)" thick clear tempered glass in non-rated, prefinished frames by Western Integrated frames with aluminum trim. Frame to be factory finished; Color: Satin Aluminum

(b) 1\(\frac{3}{8}\)" thick clear tempered glass in non-rated, M-121 glass stops; Color: Satin Aluminum

2. 1\(\frac{1}{4}\)" thick tempered safety glass where required per code.

3. Return gypsum board into opening at both sides, provide metal corner bead all around opening. Finish to match wall,

4. Provide two 20 Ga. Metal studs fastened at 12" O.C. back-to-back at jambs and head (minimum) as per detail. Provide seismic brace per code.

Note:

- All office doors to have a minimum 2’-0” wide by full height (inside window frame to inside window frame) sidelights where possible. At areas where less than 2’-0” is available, provide maximum. Sidelight frames to be integral with doorframes.

Tenant may install architectural demountable glazing panels varying form specifications above.

**SUSPENDED ACOUSTICAL CEILING**

Note: Tenant ceiling height at 10’-0” or 9’-6” (installed at top of top exterior window mullion)

1. Grid: Armstrong, Suprafine XL 9/16" 2’x4’. Finish: White Matte. Suspension System with wire suspension and seismic bracing per code or equivalent

2. Tile: Rockfon Tropic Square Tegular Narrow, 2’x4’x5/8” or equivalent.

3. Seismic bracing per code.

4. Seismic wires for lighting and electrical to be provided by acoustical ceiling contractor.

**Option open ceiling treatment:**

All areas open to structure based on tenant’s program requirement shall have “the finish appearance” including electrical wiring, low voltage wiring, mechanical ducting and surface treatment.

**WINDOW COVERINGS (Only if required by tenant)**

1. Exterior Window covering - roller shades by Mechosystems: Mecho/5 or Mecho SlimLine.

2. Window coverings to be sized to fit inside window module. Fasten to top horizontal mullions only.

**FIRE SPRINKLER SYSTEM**

1. A pre-zoned sprinkler will be provided in all areas. Head locations will be determined by a pre-zoned master layout. Modification of sprinkler locations and piping, due to specific tenant layout, will be at tenant’s cost. Semi-recessed pendent sprinkler heads with white escutcheon. Sprinkler to be centered in tile.
2. Fire Sprinkler coverage light hazard, .33 gpm / 3,000 SF in shell and modified per improvement pending code approval.

3. Gyp Board Ceilings: Fully recessed with cap at gypsum board ceiling. Reliable Model F4FR Concealed automatic sprinkler with V" - 1 1/2" adjustment - White

SIGNAGE
Refer to Landlord

CABINETRY

TENANT SUITE FINISH MATERIALS

A. **PAINT (eggsheel finish within tenant spaces, market ready and common areas)**
   Field Color: #KMW57-1 Cloud White or #46 Acoustic White by Kelly-Moore or equal.
   
   **Note:** Accent colors within open areas may be used at designer’s discretion

B. **FINISH STANDARD**

   Carpet:
   Installation: Direct Glue Down
   
   **Optional upgrade per lease:**
   Polished Concrete
   Ultraflor
   Level B / Medium Gloss (41-55)
   Level 1 cut (cream finish)

HEATING, VENTILATION AND AIR CONDITIONING

Furnish and install all materials and equipment necessary to provide complete and usable air conditioning systems in tenant spaces including, but not necessarily limited to, the following:

-4-
A. **Requirements shall be in accordance with title 24 and all other applicable codes.**

B. **CEILING DIFFUSER SPECIFICATION**

C. **THERMOSTATS**

D. **SUBMITTALS**

ShowstopperNote: Install BTU meters for any condenser water usage at tenant cost.

**ELECTRICAL**

1. **GENERAL**

   a. All work, material or equipment shall comply with the codes, ordinance and regulations of the local government having jurisdiction, including Title 24 and any participating government agencies having jurisdiction.

   b. 110V duplex outlet in demising or interior partitions only, as Manufactured by Leviton or equal. Color: White

   c. Maximum eight outlets per 20 amps 3 phase 4-wire circuit, spacing to meet code requirements. Minimum 2 per: office(l quad with drop for voice/data and 1 duplex on opposite wall), conference room, reception, 2 dedicated over cabinet at break room; junction boxes above ceiling for large open area with furniture partitions.

   d. Contractors to inspect electric room and base building Electrical drawings to include all necessary metering, connections and additional equipment, i.e., panels and transformers, if needed. Base building provides one (1) power panel and one (1) lighting panel per electrical room.

   e. Note: Install electric meter for any above-standard electrical usage at Tenant Cost.

2. **RACEWAYS**

   a. Conduit shall be rigid galvanized steel (RGS), electrical metallic tubing (EMT), metal clad (MC) cable, polyvinyl, chloride (PVC), and flexible or liquid tight flexible conduit.

   b. Type ‘AC’ and ‘NM’ cable are not acceptable.

   c. Support per seismic zone 4 requirements.

3. **WIRING DEVICES**

   a. Receptacles, toggle switches and coverplates shall be white (dedicated- gray) - Leviton. Mount so that the center of the receptacles is no less than 15’ AFF.

   b. Maximum eight (8) outlets per 20 amp 3 phase 4-wire circuit. Spacing to meet code requirements. Amounts to be two duplex outlets per small and three for large private office, storage room and conference room. One dedicated outlet per copy room; one dedicated 20-amp outlet per telephone panel and one 20-amp circuit per 200 square foot of open area for workstations.

   c. All workstation hardwire connections to be building power to be supplied by tenant.
d. Transformers to be a minimum of 20% or over required capacity shall be K-4-rated dry type.

e. Contractors to inspect electric room and base building electrical drawings to include all necessary metering and connections.

f. No aluminum wiring is acceptable. AC and NM cable is not to be used.

g. Provide separate neutrals for each circuit. Use stranded wire for each circuit. Use copper conductors only, no exception.

h. Switch assembly to be Wattstopper or Leviton or equivalent.

i. Motion sensors, day lighting controls as required by lighting management system and by Title 24.

4. **TELEPHONE / DATA OUTLETS**

a. One (1) single box to house phone/data jack with pull string from outlet box to area above T-bar ceiling with cover plate per office; Two (2) boxes to house phone/data jack with pull string from outlet box to area above T-bar ceiling with cover plate per large open area. Cover plate finish required: white, supplied by tenant’s Telcom contractor.

b. Cable service installation for phone and data outlets by tenant’s telephone/data vendors at tenant’s cost. Additional outlets and cover plates to be provided by tenant’s vendors at tenant’s cost. In speculative office suites, contractor to provide and install blank cover plates.

c. Telephone panel boards to be located within tenant space and to be surface mounted.

5. **TRANSFORMERS**

a. Transformers shall be UL listed and suitable for the application- NEMA 1 or 3 R.

b. Transformers shall be 480V (primary) - 20by/120V (secondary), rated for 80 C rise above an ambient temperature of 40 C.

c. Support for seismic zone 4 requirements.

d. Acceptable manufacturers shall be General Electric, Cutler-Hammer, Siemens, Square D, or Westinghouse.

6. **PANEL BOARDS**

a. Panel boards shall be UL listed and suitable for the application- NEMA 1 or 3R.

b. All circuit breakers shall be molded case, bolt-on type.

c. Support per seismic zone 4 requirements.

d. Acceptable manufacturers shall be General Electric, Cutler-Hammer, Siemens, Square D, or Westinghouse.

7. **LIGHT FIXTURES**

a. Support per seismic zone 4 requirements.

b. Quantities and locations per plans.
8. LIGHT CONTROL/SWITCHING

9. EXIT SIGNS
   a. Edge lite with recessed ceiling mount, floating green letters on a clear panel with LED Technology, by Dualite or equivalent.
   b. Quantities and locations per exiting and lighting plans.
   c. Single or double face and directional arrows per lighting plans.

MISCELLANEOUS

1. FIRE CAULKING
   a. General Contractor is responsible for all fire caulking required by any and all work done during the process of construction.

2. PLUMBING
   a. Shall comply with all local codes and disabled code requirements.
   b. Plumbing bid shall include 5 gallon minimum hot water heater, or insta-hot with mixer valve including all connections, located within tenant’s suite.

THE END
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EXHIBIT B-3

INSURANCE REQUIREMENTS

Tenant must provide Landlord with written evidence of the following minimum insurance requirements. In no way do the following minimum requirements limit the liability assumed elsewhere in the Work Agreement or the Lease, as amended.

A. **Commercial General Liability**
   1. Commercial General Liability: Form providing coverage not less than that of the occurrence form ISO CG 00 01 0413 Standard Commercial General Liability Insurance, including but not limited to bodily injury, property damage, personal injury, advertising injury, independent contractors’ products—completed operations (construction risks only) (including Completed Operations for a period of not less than three (3) years—construction risk only), Broad Form Property Damage explosion, collapse and underground, where applicable, and incidental malpractice. For those contractors selling/manufacturing products, Commercial General Liability coverage should be specifically endorsed to include products liability.
   2. Contractual Liability, blanket basis insuring the liability assumed under this Work Agreement.
   3. Combined Limits of Liability: $1,000,000 each occurrence, $1,000,000 aggregate.

B. **Commercial Auto Policy**
   2. Limits of Liability: Combined limits of $1,000,000 per occurrence.

C. **Umbrella Liability**
   Such insurance shall provide coverage with limits of not less than $10,000,000 per occurrence, $10,000,000 aggregate, in excess of the underlying coverages listed in Paragraphs A and B above and D(2) below.

D. **Workers’ Compensation and Employer’s Liability**
   1. Statutory requirements in the State in which the Locations are located, to include all areas involved in operations covered under this Work Agreement.
   2. Coverage “B” - Employer’s Liability, not less than $1,000,000 limit.

E. **Professional Liability (Errors and Omissions)**
   Such insurance shall cover damage by reason of any acts, errors or omissions committed or alleged to have been committed by the contractor or by anyone for whose acts the

-1-
contractor is liable, with minimum limits of no less than $1,000,000 per occurrence and $1,000,000 in the aggregate for all claims each policy year. Such insurance shall have deductible or self-insured retention not in excess of $10,000.

F. Contractors Pollution Liability Coverage
   1. Required for any contractor, subcontractor, supplier, vendor, or consultant that uses, stores, handles, releases, transports or disposes of Hazardous Materials or any other pollutants.
   2. Limits of Liability - $1,000,000 each occurrence, with a deductible not to exceed $100,000.

ADDITIONAL REQUIREMENTS
1. The amount and types of insurance coverages required herein shall not be construed to be a limitation of the liability on the part of the contractor any of its subcontractors.
2. If requested by Landlord, a certified copy of the actual policy(s) with appropriate endorsement(s) and other documents shall be provided to Landlord.
3. Landlord and its Representatives (as defined below) shall be included as Additional Insureds on all coverages provided by the contractor as listed in Paragraphs A (pursuant to an ISO Endorsement Form CG 2010 1185, or its equivalent, or, in the alternative, both ISO Endorsement Forms CG 2010 1001 Ongoing Operations and CG 2037 1001 Completed Operations), B, C and F above.
4. Tenant shall require the same primary minimum insurance requirements, as listed above, from its subcontractors and suppliers and they shall also comply with the additional requirements listed herein. Contractor must obtain a certificate of insurance from each subcontractor before they commence any Tenant Work. Landlord reserves the right to request copies of subcontractor certificates from the contractor when deemed necessary as a result of compliance audits.
5. All insurance coverages required as herein set forth shall be primary and at the sole cost and expense of Tenant, contractor, subcontractor, or suppliers, and all deductibles, premium payments, self-insured retention or claims fees shall be assumed by, for the account of, and at the sole risk of Tenant, contractor, subcontractor or supplier. Lack of compliance with these insurance requirements permit Landlord to take out and maintain insurance coverages on behalf of contractor and Tenant agrees to furnish all necessary information thereof and to pay the cost thereof to Landlord immediately upon presentation of a bill. Insurance coverages will be subject to Landlord’s approval of adequacy of protection in a form and carrier acceptable to Landlord with a minimum rating of A-:VII or higher.
6. Except where prohibited by law, each of the policies shall contain appropriate clauses pursuant to which the respective insurance carriers waive all rights of subrogation with respect to losses payable under such policies.
7. Each of the policies shall contain an endorsement pursuant to which each Landlord shall be given at least 30 (thirty) days prior written notice of cancellation of or any material change in the policy for any reason except cancellation for non-payment in which event at least ten (10) days prior written notice shall be given.

8. A Certificate of Insurance evidencing all of the above (together with a copy of the endorsements described in Section 7 above) must be presented to Landlord prior to commencement of the Tenant Work and 30 (thirty) days prior to policy renewal. The description section of the certificate will state the following:

“Re: America Center 4. US ER AMERICA CENTER 4, LLC, a California limited liability company ("Certificate Holder"), and its respective owners, members, managers, partners, shareholders and affiliates and their officers, directors, employees, agents, and representatives (collectively, "Representatives") are Additional Insureds on CGL, Auto and Umbrella. The insurance is primary to any insurance that may be carried by Certificate Holder and its Representatives and includes contractual liability in support of indemnification clause. A waiver of subrogation is granted in favor of Certificate holder and Representatives in accordance with the policy provisions of the CGL, Auto, Umbrella and Workers Compensation policies as required by written contract.”
EXHIBIT C

RULES AND REGULATIONS

1. No part or the whole of the sidewalks, plaza areas, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Project shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises. Except as provided in the Lease and the License Agreement (Rooftop Installations), Tenant shall not have access to the roof of the Building, unless accompanied by a representative of Landlord.

2. No equipment, furnishings, personal property or fixtures shall be placed on any balcony of the Building without first obtaining Landlord’s written consent. No awnings or other projections shall be attached to the exterior walls of the Building. No skylight, window, door or transom of the Building shall be covered or obstructed by Tenant, and no window shade, blind, curtain, screen, storm window, awning or other material shall be installed or placed on any window or in any window of the Premises except as approved in writing by Landlord. If Landlord has installed or hereafter installs any shade, blind or curtain in the Premises, Tenant shall not remove the same without first obtaining Landlord’s written consent thereto.

3. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the Common Area.

4. Tenant shall not place or permit its Agents to place any trash or other objects anywhere within the Project (other than within the Premises) without first obtaining Landlord’s written consent, except that trash may be deposited in the Building’s exterior dumpsters or any garbage cans located throughout the Project for the general use of tenants and occupants of the Project.

5. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish bags or other substances (including, without limitation, coffee grounds) shall be thrown therein.

6. Except as permitted pursuant to the Work Agreement or as an Alteration under the Lease, Tenant shall not mark, paint, drill into or in any way deface any part of the Project. No boring, cutting or stringing of wires shall be permitted.

7. No cooking shall be done or permitted in the Building by Tenant or its Agents except that Tenant may install and use microwave ovens. Tenant shall not cause or permit any unusual or objectionable odors to emanate from the Premises.

8. The Premises shall not be used for the manufacturing or storage of merchandise (other than merchandise for use in displays and meetings in the Premises).

9. Tenant shall not make or permit any unseemly or disturbing noises or disturb or interfere with other tenants or occupants of the Project or neighboring buildings or premises by the use of any musical instrument, radio, television set, other audio device, unmusical noise, whistling, singing or in any other way.
10. Nothing shall be thrown out of any doors, windows or skylights or down any passageways.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows of the Premises, nor shall any changes be made in locks or the mechanism thereof without prior notice to and the approval of Landlord. Tenant shall, upon the termination of its Lease, return to Landlord all keys to the Premises and other areas furnished to, or otherwise procured by, Tenant, in the event of the loss of any such keys or card keys, as applicable, Tenant shall pay Landlord the cost of replacement keys.

12. Tenant shall not use or occupy or permit any portion of the Premises to be used or occupied as an employment bureau or for the storage, manufacture or sale of liquor, narcotics or drugs. Tenant shall not engage or pay any employees in the Building except those actually working for Tenant in the Building, and Tenant shall not advertise for non-clerical employees giving the Building as an address. The Premises shall not be used, or permitted to be used, for lodging or sleeping or for any immoral or illegal purpose.

13. Subject to the terms of the Lease, Tenant shall have access to the Premises 24 hours per day, seven days per week. Landlord reserves the right to control and operate the Common Area in such manner as it deems best for the benefit of the Project tenants. Landlord may exclude from all or a part of the Common Area at all hours, other than during Normal Business Hours, all unauthorized persons. “Normal Business Hours” shall be deemed to be between the hours of 7:00 A.M. and 6:00 P.M. Monday through Friday, but excluding Building holidays. Tenant shall be responsible for all Agents of Tenant who enter the Building and Project, including, without limitation, on Building holidays and during other than Normal Business Hours and shall be liable to Landlord for all acts of such persons.

14. Tenant shall have the responsibility for the security of the Premises and, before closing and leaving the Premises at any time, Tenant shall see that all entrance doors are locked and Landlord shall have no responsibility relating thereto. Landlord will not be responsible for any lost or stolen personal property, equipment, money or jewelry from the Premises or Common Areas regardless of whether such loss occurs when the area is locked against entry or not.

15. Requests and requirements of Tenant shall be attended to only upon application at the office of Landlord. Project employees shall not be required to perform any work outside of their regular duties unless under specific instructions from Landlord.

16. Vending, canvassing, soliciting and peddling in the Project are prohibited, and Tenant shall cooperate in seeking their prevention.

17. In connection with the delivery or receipt of merchandise, freight or other matter, no hand trucks or other means of conveyance shall be permitted, except those equipped with rubber tires, rubber side guards or such other safeguards as Landlord may require.

18. No animals of any kind shall be brought into or kept about the Building or the Project by Tenant or its Agents, except (a) service dogs meeting the requirements of the ADA who are individually trained to do work or perform tasks for the benefit of an individual with a disability or (b) on Fridays only, dogs in compliance with the dog visitation policy attached as Exhibit C-1 (“Dog Visitation Policy”).
19. Landlord reserves the right to place or install vending machines in the Project (other than in the Premises).

20. Tenant shall not allow in the Premises, on a regular basis, more than six persons for each 1000 Rentable Square Feet of the Premises (“Standard Density Limitation”).

21. So that the Building may be kept in a good state of cleanliness, Tenant shall permit only contractors approved by Landlord or Landlord’s employees and contractors to clean its Premises.

22. Intentionally Deleted.

23. The persons employed to move Tenant’s equipment, material, furniture or other property in or out of the Building must be a professional moving company, whose primary business is the performing of relocation services, must be licensed to the extent required by applicable law and must be bonded and fully insured. A certificate or other verification of such insurance must be received and approved by Landlord prior to the start of any moving operations. Insurance must be sufficient in Landlord’s sole opinion, to cover all personal liability, theft or damage to the Project, including, but not limited to, floor coverings, doors, walls, elevators, stairs, foliage and landscaping. Special care must be taken to prevent damage to foliage and landscaping during adverse weather. All moving operations will be conducted at such times and in such a manner as Landlord will direct, and all moving will take place during non-business hours unless Landlord agrees in writing otherwise. Tenant will be responsible for the provision of Building security during all moving operations, and will be liable for all losses and damages sustained by any party as a result of the failure to supply adequate security. Landlord will have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects that are reasonably likely to meet or exceed the load bearing capacity of flooring in the Premises will, as necessary, stand on wood or metal strips of such thickness as is necessary properly to distribute the weight. The elevator designated for freight by Landlord will be available for use by all tenants in the Building during the hours and pursuant to such procedures as Landlord may determine from time to time. Landlord will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Project by moving or maintaining such property will be repaired at the expense of Tenant. Landlord reserves the right to inspect all such property to be brought into the Building and to exclude from the Building all such property which violates any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

24. A directory of the Building will be provided for the display of the name and location of tenants only and such reasonable number of the principal officers and employees of tenants as Landlord in its sole discretion approves, but Landlord will not in any event be obligated to furnish more than one (1) directory strip for each 2,500 square feet of Rentable Area in the Premises. Any additional name(s) which Tenant desires to place in such directory must first be approved by Landlord, and if so approved, Tenant will pay to Landlord a charge, set by Landlord, for each such additional name. All entries on the building directory display will conform to standards and style set by Landlord in its sole discretion. Space on any exterior signage will be provided in Landlord’s sole discretion.
25. Neither Landlord nor any operator of the Parking Facilities within the Project, as the same are designated and modified by Landlord, in its sole discretion, from time to time will be liable for loss of or damage to any vehicle or any contents of such vehicle or accessories to any such vehicle, or any property left in any of the Parking Facilities, resulting from fire, theft, vandalism, accident, conduct of other users of the Parking Facilities and other persons, or any other casualty or cause. Further, Tenant understands and agrees that: (i) Landlord will not be obligated to provide any traffic control, security protection or operator for the Parking Facilities; (ii) Tenant and Tenant’s Agents use the Parking Facilities at their own risk; and (iii) Landlord will not be liable for personal injury or death, or theft, loss of or damage to property.

26. Tenant (including Tenant’s Agents) will use the Parking Space Allocation solely for the purpose of parking passenger model cars, small vans and small trucks and will comply in all respects with any rules and regulations that may be promulgated by Landlord from time to time with respect to the Parking Facilities. The Parking Facilities may be used by Tenant or its Agents for occasional overnight parking of vehicles. Tenant will ensure that any vehicle parked in any of the Parking Space Allocation will be kept in proper repair and will not leak excessive amounts of oil or grease or any amount of gasoline. If any of the Parking Space Allocation are at any time used: (i) for any purpose other than parking as provided above; or (ii) in any way or manner reasonably objectionable to Landlord; provided, however, in lieu of such violation constituting an Event of a Default, Landlord will be entitled to revoke parking privileges of any individual Agent of Tenant, but no violation by Tenant’s Agent of the Rules and Regulations relating to use of the Parking Facilities will constitute a default by Tenant under the Lease. In addition to Landlord’s rights to revoke parking privileges for violation by any individual Agents of Tenant of the Rules and Regulations with respect to use of the Parking Facilities, Landlord shall have the right to charge Tenant $575 per day for each violation that remains uncured after Landlord has delivered notice to Tenant of the violation, unless Tenant cures the violation within 30 days thereafter. If the violation is of the nature that it may be repeated or continuing after the initial cure thereof or is committed by more than one individual Agent of Tenant, such as by way of example, employees parking a vehicle in the Surface Lot that leaks excessive amounts of oil, then such violation shall not be considered cured by the fact that the vehicle is subsequently removed from the Surface Lot, if that same violation is then subsequently repeated and continues to be repeated, unless and until the violation ceases completely and Tenant or Tenant’s Agents, as applicable, cease the action causing the violation or take the required action to prevent, and actually does prevent, the violation from repeating or continuing.

27. Subject to the terms of the Lease, Tenant’s right to use the Parking Facilities will be in common with other tenants of the Project and with other parties permitted by Landlord to use the Parking Facilities. Landlord reserves the right to assign and reassign, from time to time, particular parking spaces for use by persons selected by Landlord provided that Tenant’s rights under the Lease are preserved. Landlord will not be liable to Tenant for any unavailability of Tenant’s designated spaces, if any, nor will any unavailability entitle Tenant to any refund, deduction, or allowance. Tenant will not park in any numbered space or any space designated as: RESERVED, HANDICAPPED, VISITORS ONLY, or LIMITED TIME PARKING (or similar designation).
28. Intentionally Deleted.

29. Tenant has no right to assign or sublicense any of its rights in the Parking Space Allocation, except as part of a permitted assignment or sublease of the Lease; however, Tenant may allocate the Parking Space Allocation among its employees.

30. Tenant shall cooperate with Landlord in keeping its Premises neat and clean.

31. Smoking or vaping of cigarettes, pipes, cigars, e-cigarettes or any other substance is prohibited at all times within the Premises, elevators, Common Area restrooms, any other interior Common Area of the Building or Project and, unless designated as a smoking area, any exterior Common Area of the Project.

32. If required by Landlord, each tenant is required to participate in the Project’s recycling or other trash management program, as well as any green initiatives that may be in effect from time to time. This includes compliance with all instructions from the Project’s recycling or other vendor which Landlord shall distribute to each tenant from time to time. Each tenant shall store all trash and garbage within its premises or in such other areas specifically designated by Landlord. No materials shall be placed in the trash boxes or receptacles in the Project unless such materials may be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage and will not result in a violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be only through entryways and elevators provided for such purposes and at such times as Landlord shall designate.

33. These Rules and Regulations are in addition to, and shall be construed to modify and amend the terms, covenants, agreements and conditions of the Lease; provided, however, in the event of any inconsistency between the terms and provisions of the Lease and the terms and provisions of these Rules and Regulations, the terms and provisions of the Lease shall control.

34. Tenant shall give Landlord prompt notice of any known accidents to or defects in the water pipes, gas pipes, electric lights and fixtures, heating apparatus, or any other service equipment.

35. Tenant and its Agents shall not bring into the Building or keep on the Premises any bicycle or other vehicle without the written consent of Landlord.

36. Subject to the terms of the Lease, Landlord reserves the right to amend these Rules and Regulations and to make such other and further reasonable Rules and Regulations as, in its judgment, may from time to time be needed and desirable; provided that any such amendment to these Rules and Regulations shall be nondiscriminatory and apply to all tenants of the Building.

37. Tenant will refer all contractors, contractors’ representatives and installation technicians rendering any service for Tenant to Landlord for Landlord’s supervision and/or approval before performance of any such contractual services, which approval shall not be unreasonably withheld if the contractor is a professional company, whose primary business is performing the contracted services, and is licensed to the extent required by applicable law, bonded and fully insured. A certificate or other verification of such insurance must be received and
approved by Landlord prior to the start of any contractual services. Insurance must be sufficient in Landlord’s sole opinion, to cover all personal liability, theft or damage to the Project, including, but not limited to, floor coverings, doors, walls, elevators, stairs, foliage and landscaping. This shall apply to all work performed in the Building, including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, and installations of any and every nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building. None of this work will be done by Tenant without first obtaining Landlord’s written approval.

38. Without limitation to the Rules and Regulations that are applicable to the Common Areas, the following Rules and Regulations shall apply to any use of the Sports Park, subject to the terms of the Lease:
   a. The Sports Park is only available for use on a first come-first served basis by tenants of America Center and their adult employees (“Authorized User”).
   b. No guests or minors are permitted on the Sports Park unless accompanied by an Authorized User at all times.
   c. Use of the Sports Park is prohibited between the hours of 9:00 pm and 5:00 am, after dark (unless lighted) and when wet.
   d. The following are prohibited at the Sports Park at all times: smoking, cooking and use of barbeque grills (except in the Orchard), animals, food and drinks on the Basketball Court (except water in closeable plastic containers), glass containers, use of the Sports Park under the influence of alcohol, stimulants, or depressants, items with wheels on the synthetic turf, and use of tape and adhesives on the synthetic turf.
   e. No medical professionals or fitness instructors are provided by Landlord or supervising the Sports Park at any time.
   f. Only persons who are physically able, including with personally available medical assistance, are permitted to use the Sports Park. Any person who feels ill, dizzy or faint should discontinue activity at the Sports Park and seek help.
   g. Appropriate exercise shoes and attire are required. Shoes with cleats are prohibited on the Basketball Court at all times.
   h. Please report any malfunctioning equipment or damage to the Sports Park to the Project management office. Do not relocate or use any equipment at the Sports Park, except as in the manner intended for its proper use.
   i. Always practice safety and courtesy to others.
   j. Use of the Sports Park is contingent on compliance with any rules and regulations posted at the Sports Park from time to time, regardless of whether stated in these Rules and Regulations.
k. Landlord retains sole discretion to interpret and amend the rules and regulations for the use of the Sports Park, terminate use of the Sports Park at any time and to regulate use of the Sports Park through reservations, time limitations or otherwise.

39. Without limitation to the Rules and Regulations that are applicable to the Common Areas, the following Rules and Regulations shall apply to any use of the Amenities, the Amenity Building, the Phase II Common Area, the fire pit lounge and any other amenities provided in the Common Areas for Tenant’s non-exclusive use (collectively, “Common Area Amenities”):

a. Tenant understands that Landlord has provided certain Common Area Amenities for Tenant’s non-exclusive use. Such Common Area Amenities are for the use of tenants during Normal Business Hours and such additional hours as may be designated by Landlord and may be subject to reservation, at Landlord’s option, through the Project management office in advance. Landlord may condition the use of Common Area Amenities on the execution of use, release or waiver agreements by Tenant and Tenant’s Agents using the Common Area Amenities. Use of the Common Area Amenities is contingent on compliance with any rules and regulations posted at the Common Area Amenities from time to time or contained in any use, release or waiver agreements that Landlord requires to be signed by Tenant or Tenant’s Agents as a condition to use of the Common Area Amenities, regardless of whether stated in these Rules and Regulations.

b. To the extent movable, all Common Area Amenities and the equipment for the Common Area Amenities shall remain at the locations designated by Landlord all times. Tenant must use the equipment for the Common Area Amenities only in the manner intended. Landlord reserves the right to limit Tenant’s use of any such equipment or Common Area Amenities to ensure the equitable use of such equipment and Common Area Amenities by all applicable tenants. Please report any malfunctioning equipment or damage to the Common Area Amenities to the Project management office.

c. Tenant acknowledges that if gas powered Common Area Amenities are offered (i.e. the fire pit lounge or the BBQ area) that they shall not be available when the Bay Area Air Quality Management District has issued a spare the air day alert.

d. Tenant and Tenant’s Agents shall conduct themselves in a safe, courteous, quiet and well-mannered fashion when on or about the Common Area Amenities and not cause any disturbances or interfere with the use or enjoyment of the Common Area Amenities by other tenants.

e. Unless otherwise provided in the rules and regulations posted at the Common Area Amenities, the following are prohibited in the Common Area Amenities at all times without Landlord’s consent: smoking, animals, glass containers, use of the Common Area Amenities under the influence of alcohol, stimulants, or depressants, items with wheels on any synthetic turf, and use of tape and adhesives on any synthetic turf.
Subject to compliance with the “Dog Visitation Policy” described in this Exhibit C-1, Tenant’s employees may bring dogs into the Fifth & Sixth Floor Premises on Fridays only.

Bringing a dog to work is a privilege and requires complete responsibility on the part of the person bringing the dog to work (each, an “Owner”). Owners must recognize that (1) not all employees, visitors and other occupants of the Project appreciate dogs in the office, and (2) certain employees, visitors and other occupants of the Project may have intolerance to dogs, such as allergy, fear of, or phobia. The Dog Visitation Policy does not apply to the use of service animals at work, and appropriate arrangements will be determined in such cases. When bringing a dog into the Project, Owners are required to follow the Rules and Regulations and all applicable laws, statutes, ordinances and governmental rules, regulations and requirements related to bringing a dog into the Project and such other Rules and Regulations as may be implemented by Landlord or Tenant from time to time. Landlord shall have the right to revoke Tenant’s rights, or an Owner’s rights, to bring dog(s) onto the Project or the permission for a particular dog to enter the Project under this Dog Visitation Policy, if (a) such Owner or Tenant fails to comply with the Dog Visitation Policy, (b) such dog violates the Dog Visitation Policy, (c) any other tenant, occupant or invitee at the Project complains about such dog, (d) Landlord determines in its sole discretion that any such dog is bothersome in any way or a nuisance to other tenants, occupants or invitees at the Project or that revocation of permission is otherwise necessary for the welfare of the Project; or (e) Tenant does not provide immediately upon request of Landlord a copy of the registration forms and executed agreement with each Owner that Tenant is required to maintain and obtain under this Dog Visitation Policy.

Prerequisites for a Doe to be at the Project
Tenant shall maintain a system of registration for each Owner and their dog and program guidelines with which each Owner shall agree to comply prior to bringing a dog on the Project or the Premises, which program guidelines shall include the requirements in this Dog Visitation Policy and the McAfee P.A.W. Program Guidelines attached as Exhibit C-2, which is incorporated to this Dog Visitation Policy by this reference. Such registration and program guidelines will not be amended in any respect without Landlord’s prior consent. Upon Landlord’s request, Tenant shall provide reasonably satisfactory evidence that Tenant has registered the dog of each Owner, verified the compliance of each Owner and their dog with the Dog Visitation Policy and that any dog brought on the Project pursuant to this Dog Visitation Policy is properly licensed and vaccinated with proof of such license and vaccination. Tenant agrees not to permit any employee to bring a dog on the Project pursuant to this Dog Visitation Policy unless (a) Tenant has confirmed the presence of dog(s) in the Project does not violate any certificate of occupancy or other use permit affecting the Building, (b) the Owner has agreed to comply with all of the requirements of this Dog Visitation Policy and (c) the Owner has agreed not to bring its dog on the Project, unless the dog meets the following prerequisites:

- Exhibits appropriate office behavior: Walks beside you on a leash; reliably housebroken; remains calm when left alone; well socialized to people, places, sounds, and objects; enjoys being around people.
• Does not exhibit inappropriate office behavior (including but not limited to): aggression, growling, barking, chasing, biting, nipping, over-exuberance, dominance, territorialism, running away, having accidents (i.e., urinating indoors), chewing or damaging office furniture or equipment, whining, howling, or otherwise interfering with an employee’s ability to do their work. Inappropriate office behavior by a dog will result in the animal no longer being allowed in the Building as reasonably determined by Landlord. In no event shall Tenant be permitted to bring any aggressive breeds of dogs to the Project. The term “aggressive breeds” includes, without limitation, German shepherds, Dobermans, Rottweilers, pit bulls (e.g. American Staffordshire terriers, Staffordshire Bull Terriers, American Pit Bull Terriers, American Bullys and English Staffordshire Terriers), Presa Canarios, wolf mixes or any mixed breed dog whose dominant breed is one or more of the foregoing named dog breeds.

Dog Boundaries at Work

• Dogs must be on a leash or confined to a crate while entering and leaving the Project and may not be left alone in any Common Area. Dogs must enter the Building through the service entrance adjacent to the Building’s loading dock (and no other entrance) and the Owner must use the stairs on the loading side of the Building or the freight elevator designated by Landlord (and no passenger elevator) in order to access the Fifth & Sixth Floor Premises and the Dog Area (as defined in this Exhibit C-1) with the Owner’s dog. Such entrance, stairs and freight elevator, together with the path each Owner must use to access the entrance, stairs and freight area are referred to herein as the “Dog Path” and are identified on Exhibit C-3 attached hereto and incorporated herein.

• Dogs are not permitted in the First Floor Premises, must remain in the Fifth & Sixth Floor Premises, are not permitted in any Common Areas of the Project except for the Dog Path and Dog Area and not must wander throughout the Project or otherwise be left: unattended in the Fifth & Sixth Floor Premises, Building or the Project.

• Dogs must not be kenneled for periods longer than one (1) hour or otherwise remain in the Fifth & Sixth Floor Premises for periods longer than 12 hours in a 24-hour period.

• Dogs must not be in or near the employee cafeteria, break rooms, bathrooms, or conference rooms.

• Dogs must be taken to relieve themselves in the designated area identified on Exhibit C-3 attached hereto and incorporated herein (“Dog Area”) only and shall not relieve themselves in any other area in the Project. In no event shall any toilet boxes, “pee-pee pads” or dog waste of any kind be permitted, or exist, in the Premises.

• In no event shall Tenant or its employees collectively bring more than fifteen (15) dogs at any one time to the Project.

Expectations of Dog Owners

• Owners must supervise their dogs at all times, or appoint a willing and able watcher.

• Owners may not bathe or groom their dogs within the Premises, Building or the Project.

• Owners must strictly control their dogs at all times and shall not permit their dogs to foul, damage or otherwise mar any part of the Building or the Premises or cause any loud noise whether through barking, growling or otherwise.

• Owners must clean up after their dogs, immediately remove any dog waste and excrement from the Premises, the Building, and the Project, and bring supplies such as pet waste bags. If Owner is not able to completely clean and remove all of dog waste and excrement from the affected area, then Tenant shall immediately notify property management. Tenant shall pay the costs and charges of property management associated with cleaning and removing any dog waste and excrement that is not completely cleaned and removed by an Owner or Tenant to Landlord’s satisfaction.
• Owners may not leave pet food or water outside the Premises.

• Owners must maintain adequate liability insurance coverage in accordance with this Dog Visitation Policy against dog mishaps and take full responsibility.

• Owners must not bring any dog with (or suspected of having) any infection, contagious illness or internal or external parasites, including, without limitation, fleas and ticks.

**Tenant’s P.A.W. Program Guidelines**

Landlord acknowledges and agrees that it has received and reviewed Tenant’s P.A.W. Program Guidelines. Tenant acknowledges and agrees that, even though portions of Tenant’s P.A.W. Program Guidelines are drafted in the form of tips and suggestions, that Tenant will advise all Owners that the Dog Visitation Policy, which includes Tenant’s P.A.W. Program Guidelines, constitute requirements and conditions and that each Owner must fully comply with the Dog Visitation Policy, including Tenant’s P.A.W. Program Guidelines, as a condition to bringing a dog on the Project. To the extent the Tenant’s P.A.W. Program Guidelines conflict with any other provisions of the Dog Visitation Policy set forth in this Exhibit C-1, the Dog Visitation Policy set forth in this Exhibit C-1 shall control.

**Personal to Tenant**

The Dog Visitation Policy and the rights of Tenant and the Owners to bring dogs into the Project are personal with respect to MCAFEE, LLC, a Delaware limited liability company. Any assignment of the Lease or subletting of any portion of the Fifth & Sixth Floor Premises shall automatically terminate MCAFEE, LLC, a Delaware limited liability company’s rights under this Dog Visitation Policy.
McAfee P.A.W. Program Guidelines

We trust and empower our employees to manage their dog while on McAfee premises. At the same time, we have provided a few important program guidelines and tips for success. Please consider the following before deciding to bring your dog to work:

Things to Consider

• All employees are required to show proof of “current” vaccinations (DDHP, Rabies, Bordetella, Fecal)
• If your dog has shown any signs of aggression towards other dogs or people before, we ask you to please refrain from bringing them to work.
• If your dog becomes aggressive or causes issues for other employees or dogs, you will be asked to remove your dog from the premises immediately.
• If your schedule requires significant time in meetings or periods of time when your dog is unattended, please consider bringing your dog another Friday instead.

Program Guidelines

Employees who bring their dogs to work are responsible for:

• Ensuring that your dog is current on vaccination records and free of fleas or other communicable ailments
• Providing your own food, pillows, crates and any other necessary items needed for your pet
• Keeping your dog with you and on leashes at all-times (please see leash guidelines below)
• Keeping your dog out of all food areas, bathrooms, and other team members work areas
• Taking your dog outside and picking up after them using the dog receptacle bins outside
• Cleaning up after your dog if they have an accident inside and notifying Facilities
• Ensuring not to bring aggressive dogs to work
• Ensuring not to leave your dog unattended in a vehicle
• Liability if your dog bites other dogs or humans

Leash Guidelines

All dogs that are brought on-site will be required to receive a McAfee provided, color coordinated leash. These will be purchased for your dog, based on your sign-up information. As a reminder, we will be following the below color guidelines, based on your dog’s temperament:

• Green: Friendly—Plays well with all
• Yellow: Nervous—Please ask owner before petting
• Red: Caution—Please do not pet (NOTE: This is not for aggressive dogs, they are not permitted onsite)

Any employee with specific concerns should please discuss with their manager. Managers, if you have additional questions, please send us an email here.
Suggested Tips from Pet Sitters International for a Successful Pups at Work (P.A.W.) Program

• Puppy-proof your work space. If you plan on working with your dog, make sure your office environment is safe. Remove poisonous plants and pesticides, hide electrical cords and wires and secure toxic items such as permanent markers. Any office items in question should be placed out of paw’s reach.

• Make sure Fido is fit for work. Even dogs don’t get a second chance to make a first impression. Be sure your dog’s shots are current. Make plans to have your dog bathed and groomed before accompanying you to work. Be mindful of your dog’s “work readiness.” You know your dog’s demeanor, so if they are aggressive or overly shy, it’s best to leave them at home. Consider how your dog has behaved in the past around strangers before making the decision to bring them. If your dog has shown fear, irritability or aggression, or if your dog has never met strangers, the workplace is not the best place for them.

• Prepare a doggie bag. Include food, treats, bowls, toys, leash, paper towels, clean-up bags and pet-safe disinfectant. If you are routinely in and out of your work space, consider bringing a baby gate for your doorway or a portable kennel for your dog’s comfort and your peace of mind.

• Plan your dog’s feeding times carefully. During an important sales call is probably not the best time for a puppy potty break. Plan your dog’s feeding time around your work schedule and be sure to choose an appropriate area for your dog to relieve themselves afterward.

• Avoid forcing co-workers to interact with your dog. Dog lovers will make themselves known. Sally from Accounting and Joe in HR may not want to play fetch or offer belly rubs, so be mindful of fellow employees’ time and space. To avoid pet accidents, monitor the amount of treats your pet is being given from your co-workers. Remember that chocolate, candy and other people food should not be shared with dogs and that not all non-dog owners will be aware that these items can be very toxic to your pooch.

• Have an exit strategy. Although most dogs enjoy being brought to work, your pet may not. Should your dog become overly boisterous, agitated or withdrawn, consider taking him home or plan for a professional pet sitter to offer a midday check-in visit. Never, under any circumstance, leave your pet alone in a vehicle while you work.

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EXHIBIT C-3

LOCATION OF DOG PATH AND DOG AREA

[Diagram showing the location of dog path and dog area]
EXHIBIT D

SECRETARY’S CERTIFICATE

The undersigned, as secretary of , (the “Company”) named below, certifies that at a special meeting of the board of directors/managing members of the Company, duly called and held on the day of , which a quorum of the directors/managing members were present and acting throughout, the following resolutions were unanimously adopted and are still in force and effect:

RESOLVED that the president, vice president, managers, managing members or other authorized officer of the Company shall be authorized to execute a lease for office space on behalf of the Company and/or to guarantee performance of a lease for office space, described below:

Date of Lease: 
Landlord: US ER AMERICA CENTER 4, LLC
Tenant: MCAFEE, LLC
Suite Number: 110, 500 and 600
Building Address: 6220 America Center Drive
San Jose, California 95002

RESOLVED FURTHER, that the president, vice president, managers, managing members or other authorized officer is authorized on behalf of the Company to execute and deliver to Landlord all instruments reasonably necessary for the Lease. Landlord is entitled to rely upon the above resolutions until the board of directors/managing members of the Company revokes or alters same in written form, certified by the secretary of the Company, and delivers same, certified mail, return receipt requested, to Landlord. The Company is duly organized and is in good standing under the laws of the State of California. The undersigned further certifies that on the meeting date referred to above, the names and respective titles of the officers of the Company were as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Berry</td>
<td>Chief Financial Officer</td>
</tr>
</tbody>
</table>

-1-
WITNESS MY HAND this 9 day of April, 2019.

/s/ Christopher Chaffin
Signature of Secretary of Company
Christopher Chaffin
Name of Secretary (Assistant)

This instrument was acknowledged before me on the 9 day of April, 2019 by Christopher Chaffin, Secretary of McAfee, LLC, on its behalf.

/s/ Lisa R. Porter
Notary Public for the State of Texas
Name of Notary: Lisa R. Porter
My Commission Expires: October 28, 2021
THIS CONFIRMATION OF COMMENCEMENT DATE is entered into this day of , 20 , by and between US ER AMERICA CENTER 4, LLC, a California limited liability company ("Landlord"), and , ("Tenant").

Landlord and Tenant entered into an Office Lease dated (the "Lease") for approximately 84,273 Rentable Square Feet known as Suites 110, 500 and 600 (the "Premises") located on the first, fifth and sixth floors of the building known as America Center 4 located at 6220 America Center Drive, San Jose, California. Unless otherwise expressly provided herein, capitalized terms used herein shall have the same meanings as designated in the Lease.

In consideration of the foregoing, the parties hereto hereby mutually agree as follows:

1. Landlord and Tenant hereby agree that:
   a. The Commencement Date of the Lease is ____________________.
   b. The Expiration Date of the Lease is ____________________.

2. Tenant hereby confirms that:
   a. it has accepted possession of the Premises pursuant to the terms of the Lease;
   b. the Lease has not been modified, altered, or amended except as follows: ; and
   c. on the date hereof, the Lease is in full force and effect.

3. This Confirmation, and each and all of the provisions hereof shall inure to the benefit of, or bind, as the case may require, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the date first above-written.

TENANT:
MCAFEE, LLC,
a Delaware limited liability company

By: [EXHIBIT ONLY]
Name:
Title:
Date:

[LANDLORD SIGNATURE ON FOLLOWING PAGE]
LANDLORD:

US ER AMERICA CENTER 4, LLC,
a California limited liability company

By: US America Center 3 & 4 Development JV, LLC, a Delaware limited liability company,
   its sole and managing member

By: SW AC GP, LLC,
a Delaware limited liability company,
   its managing member

By: SteelWave, LLC,
a Delaware limited liability company,
   its managing member

By: [EXHIBIT ONLY]

Name: __________________________
Title: ___________________________
Date: ___________________________
EXHIBIT F

LIST OF ENVIRONMENTAL REPORTS

1. Phase I Environmental Site Assessment Report prepared by ENV America and dated September 2007—Confidential
2. Description of Closure, recorded September 4, 2007, as Instrument No. 19573415, Santa Clara County Recorder
3. California Regional Water Quality Control Board Order 01-029
4. Fact Summary of Prospective Purchaser Agreements
7. Summary of Environmental Issues for Redevelopment of the Site—Legacy America Center, August 2008
8. Environmental Safety Fact Sheet About Legacy America Center
9. Phase I Environmental Site Assessment Update prepared by Haley & Aldrich, dated December 16, 2010—Confidential
10. EPA ROD CAD980894885 dated September 29, 1989
11. Second Five Year Review Report for South Bay Asbestos Site dated September 2005
13. Post Closure Land Use Proposal revised February 2000
16. Agreement and Covenant Not to Sue Legacy Partners 2335 LLC—South Bay Asbestos Area Superfund Site, San Jose, CA, Docket No. 99-10
17. Agreement and Covenant Not to Sue WCSJ LLC, Docket No. 2000-07
19. Letter from Treadwell & Rollo to Legacy Partners CDS, Inc. dated June 30, 2011, Re Final Completion Report for Methane Mitigation System
20. Environmental Site Assessment prepared by EFI Global, Inc. dated September 26, 2013 under Project No. 98410-17806—Confidential
21. Declaration of Covenants, Conditions and Restrictions (Cargill, Inc. as Declarant) recorded October 11, 2000 Instrument No. 154191228
22. The Declaration
23. 2015 USEPA Five Year Review Report for South Bay Asbestos Superfund Site
24. 2015 USEPA Five Year Review Completion Summary for South Bay Asbestos Superfund Site
25. LEA Approval of America Center Phase II Post Closure Land Use Plan: Letter to SteelWave LLC re: America Center Phase II at the Marshland Solid Waste Facility, SWIS #43-AN-0004, Post Closure Land Use Plan Application Approval, September 9, 2015

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29. Performance Bond for Postclosure, California Integrated Waste Management Board (CIWMB) Form No. 102(b); Bond Number 105886379, Dated February 18, 2014, Principal Name: America Center Maintenance Association; Name of Facility: Highway 237 Landfill
30. Environmental Site Assessment prepared by EFI Global, Inc. dated November 23, 2015 under Project No. 98410-20405—Confidential
32. Vapor Mitigation System Construction Summary Report, America Center Development—Phase II, San Jose, California, Haley & Aldrich, Inc., February 26, 2018
33. Work Plan for Pile Installation Program, America Center—Phase II, Haley & Aldrich, April 11, 2013
34. San Francisco Bay Regional Water Quality Control Board, Concurrency with the Work Plan for Pile Installation Program, Highway 237 Landfill, America Center Phase II Project, Santa Clara County, letter dated September 6, 2013
35. Operation and Maintenance Manual for the America Center Project Site, Phase 0, Phase 1, and Phase 2, San Jose, California, Prepared by BKF Engineers, dated January 23, 2018.
36. Results of Methane Monitoring Conducted March 9, 2018 at America Center Building 6280, email data submittal from Mark Wheeler, Crawford Consulting, Inc., to Wendy Chen, Stantec, March 13, 2018
37. Status of Delisting the South Bay Asbestos Superfund Site, Summary prepared by Crawford Consulting, Inc., February 26, 2018
38. America Center Phase II Design Plans Package shared by Greg La Grega, Large Architecture, February 27, 2018, including:
   - AC2 -6220 and 6280 Landscape.pdf (Bulletin 11, Issued 8/21/2017),
   - AC2 -6280 Architecture Cold Shell.pdf (Bulletin 2, Issued 5/23/2016),
   - AC2 -6280 Architecture Warm Shell.pdf (Bulletin 2, Issued 5/23/2016),
   - AC2 -6280 MEP_Cold Shell.pdf, (Composite Cold Shell Issue, 1/26/2016),
   - AC2 -6280 MEP_Warm Shell.pdf (Plan Check Submittal, Issued 10/2/2015),
   - AC2 -6280 Structural.pdf (Bulletin 1, 5/6/2016), and AC2 Civil—Site Grading—Refuse relocation.pdf (9/18/2015).
39. MMS O&M Manual
EXHIBIT F-L

ENVIRONMENTAL NDA

[Attached]

-1-
THIS CONFIDENTIALITY AGREEMENT (this “Agreement”), dated as of the 22nd day of February, 2019 (the “Effective Date”), is between US ER AMERICA CENTER 4, LLC, a California limited liability company (“Disclosing Party”), located at c/o SteelWave, LLC, 999 Baker Way, Suite 200, San Mateo, CA, 94404, Attention: Steve Dunn and Alexis Arsenlis and c/o USAA Real Estate Company, 9830 Colonnade Blvd. Suite 600, San Antonio, TX 78230, Attention: Teddy Childers and Steve Waters, and MCAFEE, LLC, a Delaware limited liability company (“Recipient”), located at 5000 Headquarters Drive, Plano, TX 75024.

1. In connection with a potential office lease by Recipient from Disclosing Party at the building located at 6220 America Center Drive, San Jose, California 95002 (the “Purpose”), Recipient desires to review Disclosing Party’s environmental reports and materials that are non-public, confidential or proprietary in nature. Recipient shall not disclose the Confidential Information (as defined in Section 2) other than to its agents, employees, officers, directors, attorneys and consultants (collectively, “Representatives”) who: (a) need to know such Confidential Information for the Purpose; (b) know of the existence and terms of this Agreement; and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. Recipient shall safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. Recipient will be responsible for any breach of this Agreement caused by its Representatives. Recipient acknowledges and agrees that the Confidential Information was prepared by parties other than Landlord and that Landlord makes no representation or warranty regarding the Confidential Information, including, without limitation, the completeness or accuracy thereof.

2. “Confidential information” means all non-public, proprietary or confidential environmental reports and materials of Disclosing Party, in oral, visual, written, electronic or other tangible or intangible form, whether or not disclosed prior to the date hereof and whether or not marked or designated as “confidential”. In addition, any analyses, compilations, forecasts, studies or other documents prepared by Recipient or its Representatives using the Confidential Information shall be included in the definition of “Confidential Information” and subject to the same confidentiality requirements as the Confidential Information disclosed by Disclosing Party. Notwithstanding anything to the contrary, Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Recipient’s or its Representatives’ act or omission in violation of the terms of this Agreement; (b) is obtained by Recipient or its Representatives on a non-confidential basis from a third party that was not, to Recipient’s knowledge, legally or contractually restricted from disclosing such information; (c) was in Recipient’s or its Representatives’ possession, prior to Disclosing Party’s disclosure hereunder, provided that such information was documented in Recipient’s files prior to the disclosure by Disclosing Party, lawfully received by Recipient and Recipient is under no duty of confidentiality with respect to that information; or (d) was or is independently developed by Recipient or its Representatives, without using any Confidential Information.

3. If Recipient or any of its Representatives is required by applicable law or a valid legal order or on the advice of its counsel to disclose any Confidential Information, Recipient shall, so long as legally permissible, prior to disclosure, notify Disclosing Party of the requirements so
that Disclosing Party may seek a protective order or other remedy, and Recipient shall reasonably assist Disclosing Party therewith. If Recipient remains legally compelled to make such disclosure, it shall: (a) only disclose that portion of the Confidential Information that, on the advice of its legal counsel, Recipient is required to disclose; and (b) use reasonable efforts to ensure that the Confidential information is afforded confidential treatment.

4. Upon the expiration of this Agreement or otherwise at Disclosing Party’s request, Recipient shall promptly within 10 days thereafter, at Disclosing Party’s option, either return to Disclosing Party or destroy all Confidential Information in its and its Representatives’ possession and provide a written statement certifying that all such Confidential Information has been returned or destroyed; provided, Recipient shall not be required to return or destroy Confidential Information originally provided to it by electronic transmission, contained in the archival backup systems systemically created pursuant to the technology procedures of Recipient, or in a secure location if required to be retained for legal, regulatory or internal compliance purposes, as long as Recipient continues to comply with the confidentiality obligations under this Agreement.

5. The rights and obligations of the parties under this Agreement shall survive the expiration or termination of negotiations between Disclosing Party and Recipient with respect to the Purpose and shall survive the execution of a lease and any other definitive documentation with respect to the Purpose; provided, however, upon mutual execution of such lease or other documentation, such lease and documentation shall govern with respect to the matters addressed therein and to the extent of any conflict with this Agreement.

6. Recipient acknowledges and agrees that any breach of this Agreement may cause injury and irreparable harm to Disclosing Party for which money damages would be an inadequate remedy and that, in addition to remedies at law, Disclosing Party is entitled to seek injunctive and other equitable relief as a remedy for any breach, in addition to any other remedies available at law or in equity. Recipient shall promptly notify Disclosing Party of any actual or suspected misuse or unauthorized disclosure of the Disclosing Party’s Confidential Information.

7. This Agreement and all matters relating hereto are governed by, and construed in accordance with, the laws of the California, without regard to the conflict of laws provisions of that State. Any legal suit, action or proceeding relating to this Agreement must be instituted in the federal or state courts located in Santa Clara County, California. Each party irrevocably submits to the exclusive jurisdiction of those courts in any such suit, action or proceeding.

8. All notices must be in writing and addressed to the relevant party at its address set forth in the preamble (or to such other address that such party specifies in accordance with this Section 8). All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective upon actual receipt.

9. If any provision or portion of this Agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions of this Agreement will be unaffected thereby and will remain in full force and effect to the fullest extent permitted by applicable law.
10. This Agreement may not be assigned except with the prior written consent of the other party and any attempt to assign this Agreement without the other party’s consent shall be null and void.

11. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY’S ENTERING INTO THIS AGREEMENT.

12. Recipient hereby represents and warrants that Recipient has full power and authority to enter into this Agreement and that the undersigned officer is authorized to execute this Agreement on behalf of Recipient.

13. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, whether written or oral, with respect to the subject matter. This Agreement may only be amended, modified, waived or supplemented by an agreement in writing signed by or on behalf of both parties. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Counterparts of this Agreement executed and delivered by facsimile, portable document file (“pdf”) or other electronic means shall have the same force and effect as originals hereof.

[SIGNATURES ON FOLLOWING PAGE(S)]

-3-
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date,

RECIPIENT:
MCAFEE, LLC,
a Delaware limited liability company
By: /s/ Chris Chaffin
Name: Chris Chaffin
Title: VP and Assistant Secretary

DISCLOSING PARTY:
US ER AMERICA CENTER 4, LLC,
a California limited liability company
By: US America Center 3 & 4 Development JV, LLC, a Delaware limited liability company, its sole and managing member
   By: SW AC GP, LLC,
a Delaware limited liability company, its managing member
      By: SteelWave, LLC,
a Delaware limited liability company, its managing member
         By: /s/ Rick Wada
Name: Rick Wada
Title: Vice President
Locations in the Surface Lot and in the Phase II Parking Garage are attached for reserved spaces (highlighted in green and designated in the legend as "Reserved Stalls"), Car-Charging Stalls (highlighted in pink and designated in the legend as "Existing EV Stalls"), Future Car-Charging Stalls (highlighted in blue and designated in the legend as "Future EV Stalls") and EV Stations (identified by a red dot and designated in the legend as EV Station Locations).
EXHIBIT H

EXTERIOR MASTER SIGN PROGRAM

[Attached]

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<td>3</td>
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<tr>
<td></td>
<td></td>
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<td>Section 1</td>
<td></td>
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<tr>
<td>Attached Signs</td>
<td></td>
</tr>
<tr>
<td>Attached Sign Summary</td>
<td>1.00</td>
</tr>
<tr>
<td>Attached Sign Locations</td>
<td>1.01</td>
</tr>
<tr>
<td>TSD-1</td>
<td>1.10</td>
</tr>
<tr>
<td>Skyline Signs</td>
<td>1.11</td>
</tr>
<tr>
<td>TSD-2</td>
<td>1.20</td>
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</tbody>
</table>

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CITY OF SAN JOSE
Department of Planning, Building Code Enforcement

File No.: 

By: 

12/21/01

The individual development permit adjustments are subject to conditions of approval. Please check with the Building Division.
<table>
<thead>
<tr>
<th>SIGN TYPE</th>
<th>QTY.</th>
<th>SIZE</th>
<th>HEIGHT</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>THRUMNAIL</td>
<td>SIGN DESCRIPTION</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMPANY NAME</td>
<td>TID-1 - SKYLINE</td>
<td>2 per bldg</td>
<td>220 sq ft of building (max)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>220 sq ft of building (max)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>420 ft above</td>
<td>420 ft above</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.10</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>TID-2 - WALL SIGNS</td>
<td>1 sign</td>
<td>10 sq ft of building</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>10 sq ft of building</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>15 ft above</td>
<td>15 ft above</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>15 ft above</td>
<td>15 ft above</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>18 ft above</td>
<td>18 ft above</td>
<td></td>
</tr>
<tr>
<td></td>
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<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1.20</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* All signs must be certified to Section 2264.902, A, 1.0
DESCRIPTION

Wall mounted signage for the purpose of tenant identification for secondary tenants on the first and second floors.

APPROVALS AND PERMITS

Tenant shall submit sign detail drawings to the landlord prior to submitting to the city for permits.

SIGN LOCATION

Signs shall be located on the second floor, measured as shown in the right only on the building frontage designated as page 1.35.

QUANTITY

One sign for each first floor tenant. 5 signs plus a total of six signs per building for interior tenants without first floor entrances.

SIGN AREA

1.5 sq ft per tenant for occupancy Footings with a maximum aggregate of 300 sq ft per building to conform with Section 23.34.004, 2, 3, 4 of the City Zoning Ordinance.

GENERAL GUIDELINES

1. Tenant to use their corporate logo and typeface.
2. Signage shall be with standard aluminum letters and logo shape(s) provided off the wall, as shown.
3. All letters shall be color C1
4. All Tenant approved, logo may be included that allows tenant reference on the face only. Logo edges shall be color C1.
## Freestanding Sign Summary

<table>
<thead>
<tr>
<th>SIGN TYPE</th>
<th>QTY.</th>
<th>AREA</th>
<th>HEIGHT</th>
<th>SETBACKS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>THUMBNAIL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2-PROJECT ID</td>
<td>4</td>
<td>80 ft²</td>
<td>100 ft³</td>
<td>29 ft</td>
<td>20 ft</td>
</tr>
<tr>
<td>BID-BUILDING ID</td>
<td>4</td>
<td>22 ft²</td>
<td>100 ft³</td>
<td>6.25 ft</td>
<td>6.25 ft</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>8</td>
<td>425 ft²</td>
<td>386 ft³</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* For reference, Section 73.74.105, aggregate sign area is (7) square feet per each foot (1) linear foot of street frontage. Street frontages = 1,776.11 ft. Along Highway 737 = 1,265.11 ft. along interior road = 2,932.64 ft.

** Sign area is to the site. (Real estate property line is over 100' away.)
### Summary of Freestanding Signs Not Reducing Sign Area

<table>
<thead>
<tr>
<th>Sign Type</th>
<th>Sign Description</th>
<th>QTY.</th>
<th>AREA</th>
<th>HEIGHT</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>D1</td>
<td>Primary Directional**</td>
<td>3</td>
<td>22 sf</td>
<td>8.3 ft</td>
<td>3.10</td>
</tr>
<tr>
<td>D2</td>
<td>Secondary Directional**</td>
<td>3</td>
<td>11 sf</td>
<td>6.9 ft</td>
<td>3.20</td>
</tr>
<tr>
<td>SM</td>
<td>Site Map</td>
<td>1</td>
<td>6.5 sf</td>
<td>4 ft</td>
<td>3.30</td>
</tr>
<tr>
<td>AD1</td>
<td>Address Numbers</td>
<td>8</td>
<td>4 sf</td>
<td>15 in</td>
<td>3.40</td>
</tr>
<tr>
<td>AD2</td>
<td>Address Numbers</td>
<td>4</td>
<td>2.5 sf</td>
<td>10 SF board</td>
<td>3.40</td>
</tr>
<tr>
<td>RPR</td>
<td>Regulatory Sign</td>
<td>1</td>
<td>6 ft</td>
<td>2 ft</td>
<td>3.50</td>
</tr>
</tbody>
</table>

*For City of San Jose Sign Ordinance Section 23.02.910, "Signs that do not reduce allowable sign area. The following signs shall not reduce sign area otherwise allowable under this title. A. Safety or directional signs allowed by Section 23.01.1040. B. Street address required by Section 23.02.9200 and C. Signs required by law as described in Section 23.02.1030."

** D1 and D2 signs shall be installed in landscaped area, with a minimum of 20" boardons on all sides.
EXHIBIT H-1

LOCATION OF BUILDING SIGNAGE

[Attached]

-1-
EXHIBIT H-2

REPRESENTATIVE BUILDING SIGNAGE

[Attached]

-1-
This License Agreement ("License") is made this day of , 20 , by and between MCAFEE, LLC, a Delaware limited liability company ("Licensee"), and US ER AMERICA CENTER 4, LLC, a California limited liability company ("Licensor").

WHEREAS, Licensee occupies approximately 84,273 Rentable Square Feet (the "Premises") comprised of (a) the portion of the first (1st) floor known as Suite 110 and containing 6,781 Rentable Square Feet in the building containing located at 6220 America Center Drive, San Jose, California 95002 (the "Building") and (b) the entire fifth (5th) and sixth (6th) floors in the Building containing 77,492 Rentable Square Feet under an Office Lease dated between Licensee, as Tenant, and Licensor, as Landlord ("Lease") and all capitalized terms used in this License shall have the definitions assigned in the Lease, unless otherwise defined; and

WHEREAS, Licensee has requested that Licensor consent to Licensee’s installation and operation of the Rooftop Installations on the roof of the Building.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties contract and further agree as follows:

1. Consent. Licensor, in consideration of the covenants and agreements to be performed by Licensee and upon the terms and conditions herein stated, consents to Licensee installing, maintaining, operating and removing the Rooftop Installations, during the term of this License, comprised of supplemental HVAC equipment and Cabling listed in Exhibit A to this License (collectively, the "Equipment") and Cabling connections with respect to the Equipment ("Connections") on the roof of and inside the Building for the sole use of Licensee. The Equipment shall not constitute a fixture in the Building and shall remain Licensee’s property.

2. Assignment and Sublease. Licensee shall not allow anyone other than Licensee or its Permitted Transferee, a Related Entity to whom this Lease is assigned or the entire Premises is sublet in accordance with Section 10.4 or an assignee to whom this Lease is assigned pursuant to an Ownership Transfer made in accordance with Section 10.5 to use the Rooftop Installations and shall not be permitted to assign or sublet the Rooftop Installations or the installation and operation rights of the Rooftop Installations to any other party other than a Permitted Transferee, a Related Entity to whom this Lease is assigned or the entire Premises is sublet in accordance with Section 10.4 or an assignee to whom this Lease is assigned pursuant to an Ownership Transfer made in accordance with Section 10.5, without Licensor’s consent, which may be granted or denied in Licensor’s discretion.

3. Restrictions. Licensee’s installation, maintenance, operation or removal of all Rooftop Installations shall not interfere with the use or operation of any tenant’s communications currently or hereinafter existing located in the Building. If any of the Equipment is capable of use for communications, Licensee shall not (a) transmit or receive any communications via the Equipment that are unlawful, or as determined by Licensor in Licensor’s sole discretion, that are
pornographic, obscene or offensive or that otherwise tend to harm the reputation of the Licensor or the Building; and (b) use the Equipment or cause the Equipment to generate revenue or provide telecommunication services of any kind to other tenants or occupants within the Building and shall not receive any income from any third-party for the use of the Equipment.

4. **Location.** The routes or paths (each a “Cable Path”) for any Cabling for the Connections shall be through the Building’s existing risers, conduits and shafts, subject to reasonable space limitations and Landlord’s reasonable requirements for use of such areas. The location of the Equipment and any appurtenances thereto and the Cable Path(s) for the Cabling and Connections shall be as outlined on the attached Exhibit B and shall be subject to relocation at the option of Licensor at any time at Licensor’s sole cost and expense.

5. **Term.** The term of this Licensee shall commence on the first date written above and shall continue until the earlier of (i) a termination as provided under this Paragraph 5 or under Paragraph 18 hereof; or (ii) upon the termination of the Lease. Notwithstanding the foregoing sentence, in the event Licensee sublets all of the Premises other than to a Related Entity in accordance with Section 10.4 or assigns the Lease to a party other than a Permitted Transferee, a Related Entity to whom this Lease is assigned in accordance with Section 10.4 or an assignee to whom this Lease is assigned pursuant to an Ownership Transfer made in accordance with Section 10.5, this License shall terminate upon the effective date of such assignment or sublease.

6. **Installation of Equipment.** Licensee shall submit to Licensor for approval all working drawings and specifications (including for waterproofing) of the Equipment to be installed and the Structural Engineer’s Certification (as defined herein). In accordance with Section 24.21 of the Lease, Licensee shall pay as Additional Rent under the Lease Licensor’s actual documented costs of review and approval of such drawings and specifications. With respect to Cabling to be installed as part of the Rooftop Installations, the working drawings and specifications shall specify the following: (a) the locations throughout the Building where the Cabling and Cable Paths will be located; (b) the manner in which the Cabling will be run through the Building to the Connections; (c) the communications closets, if any, which will be utilized in installing and maintaining such Cabling; and (d) the amount and type of Cabling to be installed. The “Structural Engineer’s Certification” is a certification by Licensee’s approved structural engineer that the location and placement of the Equipment on the existing roof of the Building does not exceed the structural capacity of the roof structure and that the design for the installation of the Equipment in the proposed location meets current codes for wind loading. Licensor may require Licensee to shield the Equipment with a screen for aesthetic purposes. Licensee will reasonably cooperate with Licensor in order to determine with Licensee’s contractor the best Cable Paths associated with the Equipment from the roof to the Premises. The consent of Licensor in this regard shall not constitute any representations or warranty by Licensor that the Equipment’s installation will be feasible, advisable, accurate or sufficient or that Licensee will be granted permits for construction or operation by appropriate governmental authorities, or that after installation of the Equipment, the Premises will be safe, habitable or tenantable, or that the Equipment will be fit for Licensee’s purposes.

Licensee’s contractors and subcontractors shall be subject to the prior approval of Licensor, which approval shall not be unreasonably withheld, conditioned, or delayed so long as such contractors and subcontractors meet the contractor requirements set forth in the Lease, this License
Licensee’s contractor shall install Rooftop Installations in a good and workmanlike manner, subject to the terms of this License and in compliance with the applicable requirements in the Lease, including, without limitation Section 12.3 and the Rules and Regulations. Licensee shall be responsible for reimbursing Licensor for any damages to the Building during installation, maintenance, use or removal of the Rooftop Installations by Licensee or its Agents.

Upon installation of Rooftop Installations, Licensor has the right to inspect such Rooftop Installations in order to verify that such installation and the Rooftop installations comply with the approvals previously given by Licensor and does not void any warranties on the Building. If such inspections reveal any deviation from Licensor’s prior approvals, such deviation shall constitute a breach of this License and the Lease and Licensor may either require that Licensee immediately conform the Rooftop Installations to the approved specifications or terminate this Licensee with respect to the deviating Rooftop Installations pursuant to Paragraph 18 herein.

7. Access. Licensor will permit Licensee’s contractor reasonable access to the Building for the purposes permitted hereunder (a) through Common Areas of the Building only during Normal Business Hours; and (b) upon reasonable advance notice and scheduling through Licensor’s managing agent. Access after Normal Business Hours may be granted by Licensor in its reasonable discretion and for such reasonable charges as Licensor may designate in advance. Licensee’s contractor shall not have access to or through any tenant spaces, except the Premises, without prior approval by Licensor. Licensor may revoke Licensor’s access rights if any such access or the installation of Rooftop Installations by Licensor’s contractor interferes with any tenant’s business.

8. Use of Building Electricity. Licensor agrees that Licensee may use electricity in the Building for the purposes of operation of the Equipment. However, the proposed Connections, Cabling and Cable Path on the roof and throughout the Building in order to connect to the Equipment shall be subject to Licensor’s prior review and approval, to the extent of any deviation from Exhibit A or Exhibit B or to extent not outlined on such Exhibits. Licensor, at its sole discretion, may have a submetering devise installed at Licensee’s expense to bill additional electrical usage to Licensee as a result of the use of the Equipment.

9. Changes in Environment. Any future installations of additional equipment or changes in the previously approved and installed Rooftop Installations shall be subject to all the conditions and restrictions for original installation of the Rooftop Installations as set forth herein, and shall be subject to Licensor’s prior approval, which may be withheld at Licensor’s reasonable discretion.

10. Non-Exclusive Use. Licensor reserves the right to install any other equipment or allow any tenants in the Building or other licensees to install, maintain and operate other similar equipment on the roof and in the Building. Licensor shall have the right to do maintenance, repairs and remodeling to the Building and its roof at any time without Licensee’s prior approval.
Operation of the Equipment by Licensee shall not interfere in any way with the ability of the Building or its tenants to receive radio, television, microwave, short-wave, long-wave or other signals of any sort that are transmitted through the air or that will interfere with the use of any other facilities, appliances or equipment in the Building, or that will interfere with the use of any antennae, satellite dishes or other electronic equipment currently or hereafter located on the roof or elsewhere in the Project.

11. **Installation and Maintenance of Equipment Cable in the Building.** Licensee agrees that all Cabling shall be shielded cable, that the cable coating shall comply with all applicable fire codes and such Cabling shall be properly labeled so that it can be identified by Licensor, Licensor’s agents or third parties.

12. **Zoning.** Licensee acknowledges that Licensor has made no representations or warranties to Licensee that the Rooftop Installations will be permitted under applicable zoning ordinances or other applicable laws. Licensee represents and warrants to Licensor that it has ascertained that the Rooftop Installations and the installation thereof is permitted under all applicable zoning ordinances and other applicable laws, including, but not limited to, any zoning ordinances or other laws relating to height restrictions.

13. **Compliance With Law.** Licensee warrants that it will comply with all applicable laws and regulations of the United States, the State of California, or any political subdivision thereof in connection with Licensee’s installation, operation, use and removal of the Rooftop Installations, including, but not limited to, any laws relating to height restrictions. Licensee further warrants that Licensee shall, at its sole cost and expense, obtain any and all governmental licenses and permits necessary, not only to install the Rooftop Installations, but also to use, operate and remove the Rooftop Installations as herein contemplated. Licensee further agrees to obtain and maintain all necessary permits during the term hereof and that if it fails to do so, Licensor may require Licensee to remove the Rooftop Installations at Licensee’s sole cost and expense. Licensee shall give Licensor copies of any notices which Licensee receives from third parties that the Rooftop Installations are or may be in violation of any law, ordinance or regulation.

14. **Insurance Requirements of Licensee.** Licensee acknowledges that insurance maintained by Licensee shall be in full force and effect as of the first day of the term of this License and throughout the term of this License. Such insurance shall be provided as described in the Lease. Said insurance shall include the Equipment as an insured risk. It is further agreed that any insurance maintained by Licensor will apply in excess of, and not contribute with, insurance provided by Licensee. The procuring of the required policy or policies of insurance shall not be construed to limit Licensee’s liability.

15. **Insurance Requirements of Licensee’s Contractor.** Licensee’s choice of contractor for the installation and removal of the Rooftop Installations shall be subject to Licensor’s prior review and approval and such contractor must provide evidence of insurance satisfactory to Licensor no later than ten (10) days prior to the commencement date of the installation or removal of the Rooftop Installations. Such insurance shall be provided by a company reasonably acceptable by Licensor and licensed and authorized to provide insurance in the state in which the Project is located and shall include coverages meeting the minimum requirements set forth in Paragraphs A, B and C of [Schedule I](#) attached to Work Agreement of the Lease. Licensor, its affiliates and its
managing agent of the Building and the Mortgagee shall be named as additional insured parties on the contractor’s liability insurance policies under Paragraphs B and C and waiver of subrogation endorsements shall be obtained in favor of Licensor and the managing agent of the Building for all such policies.

16. **Risk of Loss.** Except to the extent caused by the gross negligence or willful misconduct of Licensor or its Agents, subject to the waiver of subrogation in Section 15.5 of the Lease, Licensee hereby assumes all risk of loss or damage to the Rooftop Installations, and the Licensor will have no liability to Licensee for damaged or stolen Rooftop Installations. Licensee agrees not to attach additional equipment or cables to the Equipment installed by Licensee pursuant hereto.

17. **Liens.** Licensee will indemnify Licensor against and hold Licensor, the Building, and the Project free, clear and harmless from and against, any Liens arising out of installation, maintenance or use or removal of the Rooftop Installations. If any such Lien, at any time, is filed against the Building, or any part of the Project, Licensee will cause such Lien to be discharged of record within 30 days after the date Licensee receives notice of the filing of such Lien, either by resolving the matter and causing a release to be recorded in the Official Records of the Santa Clara County, California, or by recording a mechanic’s lien release bond in accordance with the provisions of Civil Code Section 8424. If Licensee fails to timely cause the Lien to be removed as described above, then Licensor may, at its option, pay to the claimant all amounts necessary to discharge the Lien, regardless of the validity or enforceability of the claim, together with any related costs and interest, and the amount so paid, together with attorneys’ fees incurred in connection with such Lien, will be immediately due from Licensee to Licensor as Additional Rent as provided in the Lease. Nothing contained in this License will be deemed the consent or agreement of Licensor to subject Licensor’s interest in all or any portion of the Project to liability under any Lien or any other lien law. If Licensee receives notice that a Lien has been or is about to be filed against the Building or any part of the Project, or that any action affecting title to the Project has been commenced to enforce a Lien or otherwise on account of work done by or for or materials furnished to or for Licensee, it will immediately give Licensor written notice of such notice. At least 15 days prior to the commencement of any work (including, but not limited to, any maintenance, repairs or Alterations to the Rooftop Installations) pursuant to this License, Licensee will give Licensor written notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Licensor will have the right to post notices of non-responsibility or similar notices, if applicable, on the Building or in the public records in order to protect the Building and Project against such Liens.

18. **Termination: Default Remedies.** This License shall automatically terminate upon Expiration Date or the earlier termination of the Lease. In the event of default of any obligation under this License by either party, the injured party shall notify the defaulting party by written notice clearly and specifically identifying the default. Within three (3) days after receipt of such notice by the defaulting party, the defaulting party shall cure the default or, if such default cannot reasonably be cured within such three (3)-day period, commence the cure within such period and diligently and continuously prosecute the correction of the default until such has been corrected. If the defaulting party fails to cure the default or to commence within such three (3) day period the cure and diligently and continuously commence prosecute the correction of any default, then the injured party shall have the right to terminate this License by providing the defaulting party at least
three (3) days’ prior written notice. Notices shall be delivered in the same manner and to the same addresses set forth in the Lease. Licensor, at its sole option, may require Licensee at any time prior to the expiration or termination of this License, to immediately terminate or suspend the operation of the Equipment if in Licensor’s reasonable opinion the Equipment is (i) causing physical damage to the Building; (ii) causing a safety hazard; or (iii) causing interference in violation of the Lease or this License. If Licensee promptly corrects the item(s) in (i) - (iii) caused by the Equipment to Licensor’s sole satisfaction, Licensee may restore operation of the Equipment. If Licensee is unable or unwilling to correct the items in (i) - (iii) caused by the Equipment to Licensor’s sole satisfaction, Licensor, at its sole discretion, may immediately terminate this License for cause. Such suspension shall not affect the parties’ rights or responsibilities pursuant to this License. The indemnities and hold harmless agreements under this License and the obligations of Licensor and Licensee regarding removal of the Rooftop Installations shall survive the termination of this License. If a default by Licensee occurs under this License and remains uncured after the expiration of any applicable cure period, then Licensor may, at its option, elect one or more of the following remedies, in addition to or in conjunction with any other remedies available under this License, at law or in equity: (a) terminate this License for such default; (b) cure any such default for the account of Licensee, and in such event Licensee shall pay Licensor upon invoice as Additional Rent under the Lease all costs and expenses incurred by Licensor in connection therewith, including consultants’ and attorneys’ fees and costs, together with an administrative charge equal to twenty percent (20%) of such costs; or (c) pursue injunctive relief, and/or recovery of damages, without terminating this License. Any amounts that Licensee is obligated to pay under this License that remain unpaid for more than ten (10) days after Licensee’s receipt of an invoice shall be immediately due and payable, plus interest at the Default Rate set forth in the Lease.

19. **Indemnity.** WITHOUT LIMITATION TO THE TERMS OF THE LEASE, LICENSEE AGREES TO USE THE ROOF AT ITS OWN RISK AND HEREBY RELEASES LICENSOR AND ITS AGENTS FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY SUSTAINED BY LICENSEE OR ANY PERSON CLAIMING THROUGH LICENSEE RESULTING FROM AN ACCIDENT OR OCCURRENCE IN, ON OR ABOUT THE ROOF, UNLESS RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR OR ITS AGENTS. WITHOUT LIMITATION TO THE TERMS OF THE LEASE, EXCEPT FOR THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR OR ITS AGENTS, LICENSEE SHALL INDEMNIFY AND HOLD LICENSOR HARMLESS FROM AND AGAINST ALL LOSS, CLAIM, DAMAGE, EXPENSE OR OTHER LIABILITY ARISING OUT OF LICENSEE’S USE OF THE ROOF.

20. **Subordination.** Licensee accepts Licensor’s consent herein granted subject and subordinate to any Mortgage or Ground Lease and to all amendments, renewals, extensions and refinancing thereof, that may now or hereafter exist or constitute a lien upon the interest of Licensor in the Building or any part thereof.

21. **Attorneys’ Fees.** In the event of any legal action or proceeding between the parties hereto, reasonable attorneys’ fees and expenses of the prevailing party in any such action or proceeding may be added to the judgment therein.
22. **Waiver.** The waiver by Licensor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition herein contained.

23. **Repair and Removal.** Licensee and its Agents shall not in any manner deface, injure or damage the roof or any other part of the Building or any equipment belonging to Licensor or any other third party and Licensee shall pay Licensor as Additional Rent under the Lease the cost of repairing any damage or injury to the roof, the Building, or any part thereof, or other equipment belonging to any Licensor or any other third party during the course of or in any way arising out of the installation, operation, maintenance or removal of the Rooftop Installations. Upon expiration or sooner termination of the License and in accordance with the terms of the Lease, Licensee shall promptly remove the Equipment and repair any damages caused by such removal and restore the roof, Building and/or other equipment belonging to any tenant or other licensee to the condition it was in prior to installation of the Equipment. Additionally, at Licensee’s sole cost and expense and in accordance with Lease, Licensee shall remove any Cabling, repair any damage caused by such removal, and restore the affected portions of the Building to the condition they were in prior to the installation of the Cabling. If, at any time under the provisions of this License, Licensee is required to remove or repair the Rooftop Installations and fails to do so, Licensor may after ten (10) days’ notice remove or repair same and Licensee shall pay Licensor as Additional Rent under the Lease for the cost of said removal or repairs, as applicable, plus interest at the Default Rate set forth in the Lease.

24. **Limitation of Liability.** In consideration of the benefits accruing hereunder, Licensee agrees that in the event of any actual or alleged failure, breach or default of this License by Licensor, Licensee’s remedies shall be limited to, and Licensee shall look solely to, the interest of Licensor in the Building. Licensee agrees that each of the foregoing provisions shall be applicable to any covenant or agreement either expressly contained in this License or imposed by statute or at common law.

25. **Increased Costs to Licensor Arising From This License.** If the insurance premium or real estate tax assessment charged to Licensor with respect to the Building increases as a result of the presence or operation of the Rooftop Installations, Licensee shall pay as Additional Rent under the Lease the amount of such increase as an additional use fee within ten (10) days after receipt of an invoice from Licensor.

26. **Special Damages.** Under no circumstances whatsoever shall Licensor or Licensee ever be liable under this License for punitive damages, consequential damages or special damages. Licensee shall not be entitled to any abatement or reduction of Rent for any failure with respect to the operation of the Rooftop Installations, damage to the Rooftop Installations or stolen Rooftop Installations.

27. **Cross Default.** If Licensor terminates the Lease for an Event of Default under the Lease, then the parties acknowledge that Licensor shall have the right to terminate this License for such Event of Default; provided, however, Licensor shall not have the right to terminate the Lease for a default under the License.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]
IN WITNESS WHEREOF, the undersigned authorities have hereunto executed this License, effective on the day and year first written above.

LICENSEE:

MCAFEE, LLC,
a Delaware limited liability company

By: [EXHIBIT ONLY]
Name: ________________________________
Title: ________________________________

LICENSOR:

US ER AMERICA CENTER 4, LLC,
a California limited liability company

By: US America Center 3 & 4 Development JV, LLC, a Delaware limited liability company,
its sole and managing member

By: SW AC GP, LLC,
a Delaware limited liability company,
its managing member

By: SteelWave, LLC,
a Delaware limited liability company,
its managing member

By: [EXHIBIT]
Name: ________________________________
Title: ________________________________
EXHIBIT K

NON-DISCLOSURE AGREEMENT (FINANCIALS)

[Attached]

-1-
This Non-Disclosure Agreement (this “Agreement”), effective as of the last signature date below is made between McAfee, LLC and its Affiliates (“McAfee”) and the Company identified below (the “Company”) (each a “Party” and collectively, the “Parties”). The Parties hereby agree as follows:

1. Definitions. “Affiliate” means any entity that Controls, is Controlled by, or is under common Control with a Party. “Control” means direct or indirect ownership, through one or more intermediaries, of more than 50% of an entity’s voting capital or other voting rights. “Confidential Information” means any non-public financial statements of McAfee and its Affiliates, all non-public, confidential, and proprietary information including, without limitation, all (i) statements of financial position or balance sheets, (ii) income statements or profit and loss statements, (iii) cash flow statements and (iv) statements of changes in equity, financial forecasts, sales and other financial results disclosed by McAfee to the Company, whether disclosed orally or disclosed or accessed in written or electronic form, before or after the effective date of this Agreement, and any financial information or analyses related to such financial statements which is identified as confidential, or which can reasonably be considered confidential due to its nature, or the circumstances surrounding disclosure. “Confidential Information” does not include Information that (a) is or becomes generally available to the public, other than as a result of a disclosure in violation of this Agreement by the Company or any of Company’s Affiliates or their respective employees, directors, members, partners, shareholders, consultants, advisors (including, without limitation, financial advisors, counsel and accountants), actual and potential sources of debt and equity financing, prospective purchasers, or third party contractors (collectively, “Representatives”); (b) is received by the Company or its Representatives without any obligation of confidentiality from a third party who lawfully had possession of such information or who was not, to Company’s knowledge, legally or contractually restricted from disclosing such information; or (c) was lawfully known to, or was in the lawful possession of, the Company or its Representatives without any duty of confidentiality with respect to that information before its receipt, or disclosure, from McAfee; or (d) was Independently developed by the Company or its Representatives without reference to any Confidential Information of McAfee. As used in this Agreement, the term “Confidential Information” does not refer to a national security designation.

2. Confidentiality. The Company agrees (a) to only permit disclosure of the Confidential Information to its Representatives who have a need to know the Confidential Information and are under a no less protective obligation to keep Confidential information confidential than the terms contained in this Agreement; (b) not to disclose any Confidential Information to any third party not otherwise permitted under this Agreement; (c) not to make any copies by any means, including via computer download, photography or otherwise, of the Confidential Information; and (d) to only use Confidential Information for the purpose of evaluating, a potential lease by McAfee from Company of space in the building known as America Center 4 located at 6220 America Center Drive, San Jose,
California 85002 (the "Purpose"). The Company shall take reasonable precautions to protect the confidentiality of McAfee’s Confidential Information, with the degree of care at least equivalent to the degree of care taken by the Company to protect its own Confidential Information of a similar nature but in no event less than a reasonable degree of care under the circumstances. If the Company learns that any Confidential Information was inadvertently disclosed by the Company or was accessed by third-parties through unauthorized means, the Company shall immediately notify McAfee and take all reasonable steps to retrieve the Confidential Information and/or secure access to it. The Company will exercise commercially reasonable efforts to cause its Representatives to observe all terms of this Agreement and will be responsible for any breach of this Agreement by any of its Representatives.

3. **Mandatory Disclosure.** In the event that the Company is requested or required (whether by interrogatories, requests for information or documents in legal proceedings, subpoena, or other similar process) to disclose any Confidential Information of McAfee, the Company shall, so long as legally permissible, provide McAfee with prompt written notice of any such request or requirement so that McAfee may seek a protective order or other appropriate remedy, or, if it so elects, waive compliance with the provisions of this Agreement, if the Company is nonetheless legally compelled to disclose Confidential Information of McAfee pursuant to such process, the Company may disclose only that portion of Confidential Information of McAfee which the Company is legally required to disclose.

4. **No Warranty.** The Parties acknowledge that, as between the Parties, McAfee retains all right, title and interest in and to the Confidential Information and no license is granted or implied by the disclosure of Confidential Information to the Company hereunder. The Confidential information is disclosed "as is" and no representation, warranty, or obligation with respect to the accuracy or completeness of the Confidential information is made or undertaken by McAfee.

5. **No Waiver.** The Parties agree that a failure to enforce any of the provisions of this Agreement will not constitute a waiver.

6. **Return or Destruction of Confidential Information.** Upon demand by McAfee at any time, the Company shall, at the Company’s election, promptly destroy (provided that any such destruction shall be certified by a duly authorized Representative of the Company) or return to McAfee the Confidential information and any copies, reproductions, summaries, analyses or extracts thereof or based thereon (whether in hard-copy form or on intangible media, such as electronic mail or computer files) in the Company’s possession or in the possession of any Representative of the Company.

7. **Term.** The obligations of confidentiality and the rights of the parties under this Agreement will continue for a period of five (5) years from the date of disclosure of Confidential information.

8. **Export.** The Parties acknowledge that Confidential Information may be subject to the export control laws and regulations of the United States of America and other countries.
9. **Governing Law and Jurisdiction.** This Agreement will be construed in accordance with the laws of California, USA and subject to the jurisdiction of the courts of California, USA, without regard to the conflict of laws provisions of that State. Any legal suit, action or proceeding relating to this Agreement must be instituted in the federal or state courts located in San Jose, Santa Clara County, California. Each Party irrevocably submits to the exclusive jurisdiction of those courts in any such suit, action or proceeding.

10. **Remedies.** Each Party acknowledges that the disclosure of Confidential Information in a manner not authorized by this Agreement may cause irreparable damage that cannot be fully remedied by monetary damages. Each Party agrees that the McAfee may specifically enforce this Agreement and may seek such injunctive or other equitable relief as may be necessary or appropriate to prevent such unauthorized disclosure by the Company. Any such relief will be in addition to and not in lieu of monetary damages provided, however, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Amendment.** This Agreement may be amended only by a written agreement executed by each of the Parties hereto. No amendment of or waiver of, or modification of any obligation under this Agreement will be enforceable unless set forth in a writing signed by the Party against which enforcement is sought. Any amendment effected in accordance with this Section 11 will be binding upon all Parties hereto and each of their respective successors and assigns.

12. **Severability.** If any provision of this Agreement is deemed unenforceable or illegal, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation.

13. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the terms and conditions between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements regarding this subject matter.

14. **Notices.** All notices must be in writing and addressed to the relevant Party at its address set forth under its signature below (or to such other address Party specifies in accordance with this Section 14). All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective upon actual receipt.
15. **Assignment.** This Agreement may not be assigned except with the prior written consent of the other Party and any attempt to assign this Agreement without the other Party’s consent shall be null and void.

16. **WAIVER OF JURY.** TRIAL EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY’S ENTERING INTO THIS AGREEMENT.

17. **Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement Counterparts of this Agreement executed and delivered by facsimile, portable document file ("pdf") or other electronic means shall have the same force and effect as originals hereof.

[SIGNATURES ON FOLLOWING PAGE(S)]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last signature date below.

McAfee:

MCAFEE, LLC,
a Delaware limited liability company

By: /s/ Chris Chaffin
Name: Chris Chaffin
Title: VP and Assistant Secretary
Date: ____________________________

Notice Address:
5000 Headquarters Drive
Plano, TX 75024

Company:

US ER AMERICA CENTER 4, LLC,
a California limited liability company

By: US America Center 3 & 4 Development JV, LLC, a Delaware limited liability company, its sole and managing member

By: SW AC GP, LLC,
a Delaware limited liability company, its managing member

By: SteelWave, LLC,
a Delaware limited liability company, its managing member

By: /s/ Rick Wada
Name: Rick Wada
Title: VP
Date: ____________________________

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Notice Address:
c/o USAA Real Estate Company
9830 Colonnade Blvd, Suite 600
San Antonio, TX 78230
Attention: Teddy Childers and Steve Waters

And

c/o SteelWave, LLC
4000 East Third Avenue, Suite 500
Foster City, CA 94404-4805
Attention: Steve Dunn
EXHIBIT L

FORM OF EXISTING MORTGAGE SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “Agreement”) executed on the date(s) indicated on each acknowledgment, but effective as of __________, 20__, among BANK OZK, formerly known as BANK OF THE OZARKS (“Lender”), MCAFEE, LLC, a Delaware limited liability company (“Tenant”), and US ER AMERICA CENTER 4, LLC, a California limited liability company (“Landlord”).

STATEMENT OF BACKGROUND

Landlord and Tenant (or the predecessor in interest to either) entered into that certain Office Lease dated __________, 20__ (as the same may be amended, supplemented or otherwise modified from time to time, the “Lease”), relating to the premises described therein (the “Premises”) and being part of the Property (as defined below). Lender has made or has committed to make a loan (the “Loan”) to Landlord (or Landlord’s successor in interest) secured by a deed of trust, mortgage or security deed (the “Mortgage”) and an assignment of leases and rents (the “Assignment of Leases”) from Landlord to Lender covering certain property described in Exhibit A attached hereto and by this reference made a part hereof (the “Property”), and including the Premises. Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage, provided that, subject to the terms of this Agreement, Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

STATEMENT OF AGREEMENT

For and in consideration of the mutual covenants herein contained, the sum of Ten Dollars ($10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lease Subordinate to Mortgage. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, liens and charges created thereby, and all of Tenant’s right, title and interest in and to the Premises and any lease hereafter executed by Tenant covering any part of the Property, is and shall continue to be subject and subordinate in all respects to (i) the Mortgage and all liens and security interests securing payment of the Loans and all other security instruments securing payment of any indebtedness of Landlord to Lender now or hereafter created by Tenant covering any part of the Property and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder, and to (ii) all right, title and interest of Lender in the Property created by the Mortgage or any other security instrument held by Lender in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of such Mortgage. Landlord and Tenant hereby expressly subordinate to the Mortgage any and all options to purchase the Property contained in the Lease or in any modification or amendment to the Lease, and further acknowledge that any such option or right of first refusal pursuant to the Lease to acquire all or any portion of the Property shall not be applicable to or effective after Lender’s acquisition of the Property by foreclosure or otherwise.
2. **Non-Disturbance: Lender’s Liability Limited.** Lender does hereby covenant and agree with Tenant that, in the event Lender (or its designee) acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant is not in default under the Lease beyond any applicable notice and cure periods and Tenant complies with and performs its obligations under the Lease, (a) the Lease shall continue in full force and effect as a direct Lease between Lender (or its designee) and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease (including any extensions thereof), and Lender will not disturb the possession of Tenant, and (b) the Premises shall be subject to the Lease and Lender shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease (including any extensions thereof) in accordance with the provisions thereof; provided, however, that Lender (or its designee) shall not be (i) subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord), (ii) liable for any act or omission of any prior landlord (including Landlord), (iii) bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including Landlord), or (iv) bound by any material amendment or modification of the Lease made without its written consent. Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy.

3. **Tenant to Attorn to Lender.** Tenant does hereby covenant and agree with Lender that, in the event Lender (or its designee) acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender (or its designee) as the landlord under the Lease for the remainder of the term thereof (including any extensions thereof), and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to execute and deliver upon request of Lender an appropriate agreement of attornment to Lender and any subsequent titleholder of the Premises.

4. **Assignment of Leases: Rent Payable to Lender upon Landlord Default.** Tenant acknowledges that Landlord will execute and deliver to Lender the Assignment of Leases as security for the Loan, and Tenant hereby expressly consents to such assignment. Tenant has been advised that the Assignment of Leases gives Lender the right to collect rent and other sums payable under the Lease directly from Tenant upon the occurrence of a default thereunder, and Tenant agrees that upon the receipt from Lender of notice of any such default, Tenant will thereafter pay all rent and other sums payable under the Lease directly to Lender (or as Lender shall direct) as they become due and payable. Notwithstanding anything to the contrary contained in the Mortgage or the Assignment of Leases, Landlord authorizes and directs Tenant to immediately and continuously make all such payments by wire transfer to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payments so made, and defends, indemnifies and holds Tenant harmless from and against any and all claims, demands, losses or liabilities asserted by, through or under Landlord for any and all payments so made. Tenant agrees that neither Lender’s demanding or receiving any such payments, nor Lender’s exercising any
other right, remedy, privilege, power of immunity granted by the Mortgage or the Assignment of Leases, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects otherwise in writing or acquires the Property through foreclosure of the Mortgage or by deed from Landlord in lieu of foreclosure. Such payments shall continue until Lender directs Tenant otherwise in writing.

5. **Notice of Default or Termination Event.** Tenant hereby agrees to give prompt written notice to Lender of any default of Landlord under the Lease, and Lender shall have the same right to cure such default(s) as is provided to Landlord under the Lease within the same time periods as is provided to Landlord under the Lease. It is further agreed that such notice will be given to any successor in interest of Lender under the Mortgage, provided that prior to any such default of Landlord such successor in interest shall have given written notice to Tenant of its acquisition of Lender’s interest therein, and shall have designated the address to which such notice is to be directed.

6. **Construction of Premises.**

   (a) In the event that the construction of the Premises which is the obligation of the Landlord has not been substantially completed at the time the Lender or any third party succeeds to the interest of Landlord under the Lease by reason of foreclosure or other proceedings brought by Lender or by any transfer in lieu of foreclosure, then, in such event, Tenant hereby agrees that Lender or any such third party shall have the right to cancel and terminate the Lease upon written notice to Tenant.

   (b) Any provision of this Agreement to the contrary notwithstanding, Lender shall have no obligation or incur any liability with respect to the construction or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant’s use and occupancy. Lender (or its designee) shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, including any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord’s title, Landlord’s authority, habitability, fitness for purpose or possession. In the event that Lender (or its designee) acquires title to the Premises, Lender shall have no obligation, nor incur any liability, beyond Lender’s then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Premises for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Premises.

7. **Casualty and Condemnation Proceeds.** Landlord, Tenant and Lender hereby acknowledge and agree that, notwithstanding anything to the contrary contained in the Lease, the application of casualty and condemnation proceeds with respect to Landlord’s Premises shall be governed by the terms and conditions contained in the Lease. Notwithstanding the foregoing, in the event that any insurance proceeds or condemnation awards are received prior to the Commencement Date of the Lease and such amount is sufficient to pay Landlord’s indebtedness to Lender in full, then such amount shall be so applied.
8. **Lease Status.** The Lease is in full force and effect and there are no amendments, supplements or modifications of any kind (except as referenced above) and together herewith constitutes the entire agreement between Tenant and Landlord with respect to the Premises. There are no other promises, agreements, understandings, or commitments of any kind between Landlord and Tenant with respect to the Premises or any other space at the Property.

9. **Amendment, Rent Prepayment or Surrender.** Without Lender’s prior written consent, Tenant will not (i) enter into any agreement amending the rental, lease term or Landlord’s obligations provided for in the Lease or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of its accrual or (iii) voluntarily surrender any portion of the Premises or terminate the Lease without cause or shorten the Lease term, and no such purported amendment, modification, termination, prepayment or voluntary surrender made without Lender’s prior written consent shall be binding on Lender.

10. **Invalid or Inoperative Provisions.** If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. **No Mortgagee in Possession.** Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement.
13. **Notices.** Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to a reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Communications (i) mailed shall be effective upon two (2) Business Days’ following its deposit (properly addressed) with the United States Postal Service or any successor thereto; (ii) given by personal delivery shall be effective only if and when received by the addressee; (iii) sent by a reputable commercial delivery service shall be effective upon the transmitting parties’ receipt of written verification of delivery from such reputable commercial delivery service at the property address indicated hereinbelow; and (iv) given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of Communications, the addresses of the parties shall be as set forth below:

**Lender:**
Bank of the Ozarks  
8300 Douglas Avenue Suite 900  
Dallas, Texas 75225  
Attn: Managing Director, Asset Management

with a copy to:  
Bank of the Ozarks  
6th and Commercial  
P.O. Box 196  
Ozark, Arkansas 72949  
Attn: Regina Barker

**Landlord:**
SteelWave, LLC  
999 Baker Way, Suite 200  
San Mateo, CA 94404  
Attn: Steve Dunn

with a copy to:  
c/o USAA Real Estate Company  
9830 Colonnade Boulevard, Suite 600  
San Antonio, Texas 78230-2239  
Attn: Teddy Childers  
Attn: Steve Waters

**Tenant:**
McAfee, LLC  
c/o MBG Consulting  
980 N Michigan Ave #1000  
Chicago, IL 60611

with a copy to:  
Gary Bennett, Facilities  
McAfee, LLC 5000  
Headquarters Dr.  
Plano, TX 75024

Any of the foregoing parties shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days’ notice to the other party in the manner set forth herein.

14. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term “landlord” refers to Landlord and to any successor to the interest of Landlord under the Lease.

15. **Multiple Counterparts; Modification or Termination.** This Agreement may not be discharged or modified orally or in any manner other than by an agreement in writing specifically
referring to this Agreement and signed by the party or parties to be charged thereby. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. This Agreement may be transmitted and/or signed by facsimile or e-mail transmission (e.g., “pdf” or “tif”).

16. **Further Assurances.** Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters set forth above, and as to Tenant’s occupancy of the Premises, whether Tenant has exercised any renewal or expansion options and any other information that Lender may reasonably require to confirm the current status of the Lease, including, without limitation, a confirmation that the Lease is and remains subordinated as provided in this Agreement. Landlord and Tenant from time to time shall execute and deliver at Lender’s request all instruments that may be necessary or appropriate to evidence their agreements hereunder.

[SIGNATURE PAGE FOLLOWS]
EXECUTED to be effective as of the date first written above.

LENDER:

BANK OZK

By: [EXHIBIT ONLY]

Name: Juan Gonzalez
Title: Managing Director - Asset Management - Real Estate Specialties Group

STATE OF TEXAS

§

COUNTY OF DALLAS

§

BEFORE ME, a Notary Public in and for said County and State, personally appeared JUAN GONZALEZ, Managing Director - Asset Management - Real Estate Specialties Group of BANK OZK, Lender in the foregoing, and he acknowledged that he did sign said instrument for and on behalf of said banking corporation, as the voluntary act and deed of said banking corporation, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this day of , 20 .

[SEAL]

Notary Public, State of Texas

My Commission Expires:

Printed Name of Notary Public

-1-
TENANT:

MCAFEE, LLC,
a Delaware limited liability company

By: [EXHIBIT ONLY]
Name: ____________________________
Title: ____________________________

(CORPORATE SEAL)

STATE OF TEXAS §

COUNTY OF DALLAS §

BEFORE ME, a Notary Public in and for said County and State, personally appeared , of , a(n) , TENANT in the foregoing, and (s)he acknowledged that (s)he did sign said instrument for and on behalf of said , as the voluntary act and deed of said, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this day of , 20 .

(SEAL)

My Commission Expires:

Notary Public, State of Texas

Printed Name of Notary Public

-2-
LANDLORD:
US ER AMERICA CENTER 4, LLC,
a California limited liability company

By: US America Center 3 & 4 Development JV, LLC, a
Delaware limited liability company,
its sole and managing member

By: SW AC GP, LLC,
a Delaware limited liability company,
its managing member

By: SteelWave, LLC,
a Delaware limited liability company,
its managing member

By: [EXHIBIT ONLY]

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, a Notary Public in and for said County and State, personally appeared , of SteelWave, LLC, a Delaware limited liability company, managing member of SW AC GP, LLC, a Delaware limited liability company, managing member of US America Center 3 & 4 Development JV, LLC, a Delaware limited liability company, sole and managing member of US ER AMERICA CENTER 4, LLC, a California limited liability company, LANDLORD in the foregoing, and (s)he acknowledged that (s)he did sign said instrument for and on behalf of said limited liability company, as the voluntary act and deed of said limited liability company, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this day of , 20 .

[SEAL]

Notary Public, State of Texas

My Commission Expires:

Printed Name of Notary Public

[EXHIBIT A - LEGAL DESCRIPTION OF PROPERTY TO BE ATTACHED]

-3-
UNCONDITIONAL AND IRREVOCABLE LETTER OF CREDIT NO.

Applicant: McAfee, LLC
c/o MBG Consulting
980 N Michigan Ave # 1000
Chicago, IL 60611
Beneficiary: US ER AMERICA CENTER 4, LLC
c/o USAA Real Estate Company
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239

Amount USD $3,754,362.15 ~ Five Million Five Thousand Eight Hundred Sixteen and 20/100 USD [12 month term]

Expiry at close of (Bank Name) business

We hereby issue in your favor this unconditional (except as stated herein) and irrevocable Letter of Credit No. which is available by payment with ourselves against presentation of your draft at sight drawn on (Bank Name) bearing the clause: “Drawn under credit No. of (Bank Name)” accompanied only by this original unconditional and irrevocable Letter of Credit and the following document:

Beneficiary’s signed and dated statement worded “This certifies that MCAFEE, LLC has committed an Event of Default as defined under the Lease dated , and any amendments thereto, between MCAFEE, LLC and US ER AMERICA CENTER 4, LLC.”

There shall be no additional requirements for Beneficiary to receive payment hereunder. This unconditional (except as stated herein) and irrevocable Letter of Credit sets forth, in full, the terms of our understanding, and such undertaking shall not in any way be construed as an amendment or modification to any agreement between the Beneficiary and the Applicant.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE YEAR EACH FROM THE CURRENT EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. ANY SUCH NOTICE SHALL BE EFFECTIVE WHEN SENT BY US AND UPON SUCH NOTICE TO YOU, YOU
MAY DRAW AT ANY TIME PRIOR TO THE THEN CURRENT EXPIRATION DATE, UP TO THE FULL AMOUNT THEN AVAILABLE
HEREUNDER, AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT AND THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL
AMENDMENTS THERETO, ACCOMPANIED BY YOUR SIGNED STATEMENT ON YOUR LETTERHEAD STATING THAT YOU ARE IN
RECEIPT OF BANK OF AMERICA, N.A.‘S NOTICE OF NONEXTENSION UNDER LETTER OF CREDIT NO. AND THE APPLICANTS
OBLIGATION TO YOU REMAINS.

Partial and Multiple Drawings permitted.

This unconditional (except as stated herein) and irrevocable Letter of Credit shall inure to the benefit of and be binding upon the successors and assigns
of (Bank Name).

THIS LETTER OF CREDIT IS TRANSFERABLE IN FULL AND NOT IN PART, AND MAY BE TRANSFERRED ONE OR MORE TIMES. ANY
TRANSFER MADE HEREUNDER MUST CONFORM STRICTLY TO THE TERMS HEREOF AND TO THE CONDITIONS OF ARTICLE 38 OF
THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) FIXED BY THE INTERNATIONAL
CHAMBER OF COMMERCE, PUBLICATION NO. 600. SHOULD YOU WISH TO EFFECT A TRANSFER UNDER THIS CREDIT SUCH
TRANSFER WILL BE SUBJECT TO THE RETURN TO US OF THE ORIGINAL CREDIT INSTRUMENT, ACCOMPANIED BY OUR FORM OF
TRANSFER ATTACHED HERETO AS EXHIBIT A, PROPERLY COMPLETED AND SIGNED BY AN AUTHORIZED SIGNATORY OF YOUR
FIRM, BEARING YOUR BANKERS STAMP AND SIGNATURE AUTHENTICATION. APPLICANT SHALL BE RESPONSIBLE FOR PAYMENT
OF OUR TRANSFER FEE.

Except so far as otherwise expressly stated, this unconditional (except as stated herein) and irrevocable Letter of Credit is subject to the “Uniform
Customs and Practice for Documentary Credits” International Chamber of Commerce Publication No. 600 (2007 Revision)

Authorized
Signature Title

-5-
EXHIBIT A TO FORM OF LETTER OF CREDIT

TRANSFER FORM

Bank of America N.A.
1 Fleet Way
Scranton, PA 18507-1999
Mail Code PAÓ-580-02-30
Attn: GTO ~ Standby Unit

Re: Irrevocable Standby Letter of Credit No.

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to the transferee, named below:

__________________________
Name of Transferee

__________________________
Address

By this transfer all our rights as the transferor, including all rights to make drawings under the Letter of Credit, go to the transferee. The transferee shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the transferee without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the transferee with your customary notice of transfer.

The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form. The authorization of the Beneficiary’s signature and title on this form also acts to certify that the authorizing financial institution (i) is regulated by a U.S. federal banking agency; (ii) has implemented anti-money laundering policies and procedures that comply with applicable requirements of law, including a Customer Identification Program (CIP) in accordance with Section 326 of the USA PATRIOT Act; (iii) has approved the Beneficiary under its anti-money laundering compliance program; and (iv) acknowledges that Bank of America, N.A. is relying on the foregoing certifications pursuant to 31 C.F.R, Section 103.121 (b)(6).
<table>
<thead>
<tr>
<th>NAME OF BANK</th>
<th>NAME OF TRANSFEROR</th>
</tr>
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<tbody>
<tr>
<td>AUTHORIZED SIGNATURE AND TITLE</td>
<td>NAME OF AUTHORIZED SIGNER AND TITLE</td>
</tr>
<tr>
<td>PHONE NUMBER</td>
<td>AUTHORIZED SIGNATURE</td>
</tr>
</tbody>
</table>
EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”), is made and entered into as of June 1, 2017 (“Effective Date”), by and among McAfee Employee Holdings, LLC (the “Company”), Foundation Technology Worldwide LLC (“Parent”) and Christopher D. Young (“Executive”). This Agreement shall become effective as of the Effective Date.

WHEREAS, the Company desires to employ Executive on the terms and conditions contained herein; and

WHEREAS, Executive desires to be employed by and render services to the Company upon and subject to the terms, conditions and other provisions set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the adequacy of all of which consideration is hereby acknowledged, the parties hereby agree as follows:

1. EMPLOYMENT

1.1 Agreement and Term. The Company hereby agrees to continue to employ Executive, and Executive hereby accepts such employment and agrees to render such services to the Company, on the terms and conditions set forth in this Agreement. Unless terminated earlier as set forth in Section 3 herein, Executive’s employment and the term under this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with Section 3 below (the “Term”).

1.2 Position and Duties. Except as otherwise provided in this Agreement, during the Term of this Agreement, Executive shall serve as the Chief Executive Officer of the Company and Parent, and shall report directly to the Board of Managers of Parent (the “Board”). In addition, for so long as Executive remains the Chief Executive Officer of Parent, Executive shall serve as a member of the Board. Executive shall perform duties, undertake the responsibilities, and exercise the authorities customarily performed, undertaken and exercised by persons situated in a similar capacity at a similar company. Executive’s principal work location shall be at the Company’s offices in Santa Clara, California or such other location as Executive and the Company shall mutually agree, (hereinafter the “Principal Place of Business”) provided that Executive may be required to travel as reasonably necessary in order to perform his duties and responsibilities hereunder. Executive shall carry out his duties and responsibilities at all times in compliance with the Company’s written policies and procedures that have been made available to Executive, as in effect from time to time. Executive shall also perform such other duties, commensurate with his position, as reasonably requested by the Board, including service as an officer or director of Parent or any of its Subsidiaries (as defined in the LLC Agreement, as defined below) (together with Parent, and each individually a member of, the “Company Group”) without additional compensation. During the Term of this Agreement, Executive shall use his best business efforts to serve the Company Group faithfully, diligently and competently and to the best of his ability, and to devote his full time business hours, energy, ability, attention and skill to the business of the Company Group; provided, however, that the foregoing is not intended to preclude Executive from noncompetitive activities that are conducted outside normal business hours and permitted under Section 1.3 hereof.
1.3 Outside Activities. During the Term of this Agreement, (i) with the prior written consent of the Board, Executive may serve on the board of directors of a for-profit entity and as a director or advisor of other not-for-profit educational, welfare, social, religious and civic organizations (which consent is hereby granted for Executive’s service to the Board of Directors of Snap Inc. and on the National Security Telecommunications Advisory Committee), and (ii) Executive may perform charitable and other activities, and manage his personal investments; provided, however, that in the case of either (i) or (ii) such activities do not materially interfere with the performance of his duties hereunder and otherwise to the Company Group and are not in conflict or competitive with, or adverse to, the interests of the Company Group. Executive shall not, however, under any circumstances, provide services or advice in any capacity whatsoever for or on behalf of any entity that competes with or is competitive with the Company Group.

2. COMPENSATION AND BENEFITS; EXPENSES

   2.1 Salary. The Company shall compensate and pay Executive for his services at a rate equivalent to $585,000 per year (the “Base Salary”), less payroll deductions and all required tax withholdings, which salary shall be payable in accordance with the Company’s customary payroll practices applicable to its executives, but no less frequently than semi-monthly. The Base Salary shall be subject to annual review and possible increase by the Board based on individual and Company performance.

   2.2 Bonus. With respect to each fiscal year of the Company ending during the Term and subject to the achievement of any applicable performance goals, based on corporate, business unit and/or individual performance, to be established by the Board after conferring with Executive, Executive shall be entitled to participate in the Company’s annual incentive plan, as such, and on such terms and conditions as, may be established by the Board from time to time, under which Executive shall be eligible to earn an annual bonus (the “Annual Bonus”) with a target amount initially equal to 125.708% of the Base Salary (the “Target Bonus”), subject to Executive being employed with the Company on the date that the Annual Bonus is paid (except as otherwise provided in Section 3). The Company shall pay earned Annual Bonuses to Executive no later than 2¹⁄₂ months following the end of each fiscal year. The Target Bonus shall be subject to review and possible increase by the Board based on individual and Company performance at the Board’s sole discretion.

   2.3 Employee Benefits. During the Term of this Agreement, to the extent eligible under the applicable plans or programs and applicable law, Executive shall be entitled to participate in the employee benefits plans and programs made available to executive level employees of the Company generally, such as health, medical, dental, death and disability and other insurance coverage and group retirement plans. The terms and conditions of Executive’s participation in any employee benefit plan or program shall be subject to the terms and conditions of such plan or program, as may be modified by the Company from time to time. Nothing in this Agreement shall preclude the Company from amending or terminating any employee benefit plan or program, subject to the terms of the applicable plan or program.
2.4 Vacations. Executive shall be entitled to twenty (20) days of vacation per year, in addition to holidays observed by the Company. Vacation may be taken at such times and intervals as Executive shall determine, subject to the business needs of the Company Group. Vacation shall otherwise be subject to the policies of the Company Group, as in effect from time to time.

2.5 Long-Term Incentives.

(a) As soon as practicable following the Effective Date, Parent will grant Executive restricted share units payable in Class A Units of Parent (such restricted share units, the “RSUs”, and such Class A Units the “Class A Units”), Management Incentive Units of Parent (the “Management Incentive Units”), and (unless Executive elects otherwise) a cash award (the “Cash Award”) in each case, pursuant to the Foundation Technology Worldwide LLC 2017 Management Incentive Plan (the “Plan”).

(b) Pursuant to this Section 2.5, Executive will be granted 910,000 Management Incentive Units and 90,000 RSUs, which together will represent approximately 1% of the units, convertible securities and other equity-based awards of Parent outstanding as of the date of grant, calculated on a fully-diluted basis but without including (i) any Redemption Units (as defined in the LLC Agreement (as defined below)) and (ii) any units that may be issued in settlement of RSUs granted in lieu of cash-based awards that are scheduled to vest on or before April 3, 2018. The amount that may become payable under the Cash Award is $7,054,358 (inclusive of amounts paid prior to the Effective Date), which represents the value of Executive’s unvested Intel restricted stock units, unvested Intel outperformance restricted stock units (with performance determined in accordance with Section 7.1(j) of the Subscription Agreement by and among Parent, Intel Corporation and TPG VII Manta Holdings, L.P. dated as of September 6, 2016, as amended (the “Subscription Agreement”)) and unvested Intel stock options, in each case, that were scheduled to vest not later than April 3, 2018; provided that the amount payable under such Cash Award will be reduced by the value of any additional RSUs that Executive elects to receive in lieu of any portion of such Cash Award; and provided further that, in the event Executive so elects, Executive will be granted additional RSUs with an aggregate Fair Market Value (as defined in the LLC Agreement) equal to the amount of such portion of the Cash Award that Executive elects not to receive.

(c) The specific terms and conditions governing all aspects of the RSUs, Management Incentive Units and the Cash Awards shall be consistent with the Plan and as set forth in the grant agreement governing such awards, and as a condition to receiving the Class A Units and Management Incentive Units, Executive shall be required to become party to Parent’s Amended and Restated Limited Liability Company Agreement dated as of April 3, 2017 (the “LLC Agreement” and together with the Plan and the applicable grant agreement, the “LTI Agreements”).

(d) As soon as practical after the Effective Date, Executive shall be given the opportunity to purchase Class A Units at the same price per Class A Unit as is paid by TPG VII Manta Holdings, L.P. at the closing of the transactions contemplated by the Subscription Agreement, subject to Executive executing a subscription agreement in the form provided by the Company and the LLC Agreement.
(e) Notwithstanding anything in the LTI Agreements or the subscription agreement to the contrary, if Parent exercises its call rights pursuant to Section 13 of the LLC Agreement in respect of any vested Class A Units or Management Incentive Units and Executive believes in good faith that the Fair Market Value (as defined in the LTI Agreements) of such Class A Units or Management Incentive Units is greater than the amount determined by the Board of Managers (as defined in the LTI Agreements), then Executive may deliver a written objection notice to Parent within thirty (30) days of such determination (an “Objection Notice”). If Executive timely delivers such an Objection Notice, then Parent will promptly engage an Independent Appraiser. The Independent Appraiser will be engaged to deliver to Parent and Executive a written determination (such determination to include a report setting forth all material analyses used in arriving at such determination) within sixty (60) days of being engaged stating the Independent Appraiser’s determination of the fair market value, as of the date the notice of repurchase was delivered, of such vested Class A Units and/or Management Incentive Units, as applicable, as determined by such Independent Appraiser shall be deemed to be the Fair Market Value and shall be final and binding on the parties. If such Fair Market Value determined by the Independent Appraiser is at least 10% higher than the Fair Market Value previously determined by the Board of Managers, then the costs and expenses of such Independent Appraiser shall be borne by Parent. If such Fair Market Value determined by such Independent Appraiser is not at least 10% higher than the Fair Market Value previously determined by the Board of Managers, then the costs and expenses of such Independent Appraiser shall be borne by Executive (which costs and expenses may, in whole or in part, be deducted from the cash or other consideration otherwise deliverable to Executive in respect of the repurchase of such Class A Units and/or Management Incentive Units or any other payment owing to Executive by the Company Group).

For purposes of this Agreement, “Independent Appraiser” means an independent appraiser selected by Parent and agreed upon by Executive (which agreement shall not be unreasonably withheld or delayed).

2.6 Business Expenses. The Company shall reimburse Executive or otherwise provide for or pay for reasonable out-of-pocket expenses incurred by Executive in furtherance of or in connection with the business of the Company Group, including, but not limited to, travel and entertainment expenses commensurate with his duties hereunder (including attendance at industry conferences), subject to the Company Group’s policies as periodically reviewed by the Board and in effect from time to time, including without limitation such reasonable documentation and other limitations as may be established or required by the Company Group.

3. TERMINATION

3.1 Notice of Termination. With the exception of termination of Executive’s employment due to Executive’s death, any purported termination of Executive’s employment by the Company for any reason, including without limitation for Cause or Disability, or by Executive for any reason, shall be communicated by a written “Notice of Termination” to the other party. “Notice of Termination” means a dated notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) specifies a Termination Date, except in the case of the Company’s termination of Executive’s employment for Cause, for which the Termination Date may be the date of the notice. “Termination Date” means (i) if Executive’s
employment is terminated for Cause or Disability, the date specified in the Notice of Termination, (ii) in the case of termination of employment due to death, the date of Executive’s death, or (iii) if Executive’s employment is terminated for any other reason, the date on which a Notice of Termination is given or as specified in such Notice which, in the event of a termination by Executive without Good Reason, shall not be less than thirty (30) days after such notice, unless otherwise agreed to by the parties. For purposes of clarification, the Term shall end on the Termination Date.

3.2 Termination Due to Death or Disability. If Executive’s employment and the Term is terminated by reason of Executive’s death or Disability, Executive or his estate shall be entitled to receive: (a) Executive’s earned but unpaid Base Salary through the Termination Date; (b) an amount for reimbursement, paid within thirty (30) days following submission by Executive (or if applicable, Executive’s estate) to the Company of appropriate supporting documentation for any unreimbursed business expenses properly incurred prior to the Termination Date by Executive pursuant to Section 2.5 and in accordance with Company Group policy; (c) any earned but unpaid Annual Bonus related to the completed fiscal year preceding the fiscal year in which termination of employment occurs (the “Prior Year’s Bonus”); (d) any earned and unused vacation, paid when required by applicable law and no later than thirty (30) days following the Termination Date; and (e) such employee benefits, if any, to which Executive (or, if applicable, Executive’s estate) or his dependents may be entitled under the employee benefit plans or programs of the Company, paid in accordance with the terms of the applicable plans or programs (the amounts described in clauses (a) through (e) hereof being referred to as the “Accrued Rights”). For purposes hereof, “Disability” means Executive is unable to perform the essential functions of his position with substantially the same level of quality as immediately prior to such incapacity (notwithstanding the provision of any reasonable accommodation) by reason of any medically determinable physical or mental impairment which has lasted or can reasonably be expected to last for a period of one hundred twenty (120) or more consecutive days or one hundred twenty (120) days during any consecutive six (6) month period, as determined by a physician to be selected by mutual agreement between Executive and the Company.

3.3 Termination by Executive for Other Than Good Reason. In the event Executive terminates his employment and the Term for other than Good Reason, Executive shall be entitled to receive the Accrued Rights.

3.4 Termination by the Company for Cause. In the event the Company terminates his employment and the Term for Cause, Executive shall be entitled to receive the Accrued Rights (other than the Prior Year’s Bonus).

3.5 Termination by the Company without Cause or by Executive for Good Reason. If Executive’s employment and the Term is terminated by the Company without Cause, or by Executive for Good Reason, Executive shall be entitled, in addition to the Accrued Rights and subject to Executive’s continued compliance with this Agreement and the LTI Agreements, and Executive’s execution, delivery and non-revocation of an effective release of all claims against the Company Group in the form attached hereto as Exhibit A (the “Release”) within the sixty (60) day period following the date of the termination of Executive’s employment (the “Release Period”) to receive:

-5-
(a) equal or substantially equal payments over the twelve (12)-month period following the date of termination (the "Severance Period"), in an aggregate amount equal to one (1) times (x) Executive’s then-current Base Salary plus (y) the Target Bonus, with such amounts to be paid in accordance with regular payroll practices, less applicable withholdings and taxes;

(b) Executive’s Annual Bonus for the year in which the Termination Date occurs with payment based on actual performance during the year of termination, pro-rated to reflect the number of days during the bonus year in which Executive was employed by the Company;

(c) provided that Executive timely elects COBRA (as defined below) coverage, a taxable subsidy (the “COBRA Subsidy”) to participate in the Company’s medical, dental and vision plans, in an amount, on an after-tax basis, that is equal to the employer-paid portion for active employees who elect the same type of coverage (e.g., individual only, individual plus family, etc.) through the earlier of the end of the twelve (12)-month period immediately following the Termination Date and the time at which Executive becomes eligible for group health coverage from another employer, with such subsidies payable by the Company on a monthly basis in substantially equal installments not later than the end of the month to which they relate. Executive must notify the Company within seven (7) days of learning that he will become eligible to for group health coverage from another employer.

(d) full accelerated vesting upon the Termination Date of all Cash Awards granted pursuant to Section 2.5 above, with such Cash Awards to be paid out within sixty (60) days of the Termination Date in the form of a lump sum in cash equal to their value; and

(e) full accelerated vesting upon the Termination Date of all RSUs granted pursuant to Section 2.5 above, with such RSUs to be paid out within sixty (60) days of the Termination Date in the form of a lump sum in cash equal to the lesser of (i) the sum of (a) the fair market value of the unvested Intel restricted stock units and unvested Intel outperformance share units (with performance determined in accordance with Section 7.1(j) of the Subscription Agreement) and (b) the spread value of the unvested Intel stock options, in each case, for which they were substituted and determined as of the closing of the transactions contemplated by the Subscription Agreement and (ii) the Fair Market Value of the RSUs at the time of termination of Executive’s employment with the Company.

If the Release Period spans two (2) calendar years, then payments that would otherwise have been made prior to the end of the Release Period will be made, after the release becomes irrevocable, in the form of a lump sum on the first payroll date that occurs in the second calendar year.

(i) "Cause" means, as determined by the Board in its reasonable good faith judgment, Executive’s: (i) commission of an act of material fraud; (ii) intentional refusal or willful failure to carry out the lawful and reasonable instructions of the Board or commission of an act of material dishonesty; (iii) conviction of (or a plea of no contest to) a (x) felony or (y) misdemeanor crime involving moral turpitude, where moral turpitude means so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community); (iv) gross misconduct or gross negligence in connection with
the performance of his duties; (v) material breach of any provision of this Agreement or material violation of any material written policy or written code of conduct of the Company Group that has been made available to Executive; (vi) breach of fiduciary duty to the Company Group; (vii) failure to cooperate with the Company Group in any investigation or formal proceeding or being found liable in a Securities and Exchange Commission (the “SEC”) enforcement action; or (viii) breach of duty of loyalty to the Company Group. Executive will not be terminated for Cause until Executive has been given the opportunity to appear in person with legal counsel before the entire Board in order to explain Executive’s position on the allegations or claims that constitute Cause.

(ii) “Good Reason” shall mean, without Executive’s consent: (i) a material breach by the Company Group of this Agreement or other written material agreement between Executive and the Company Group; (ii) a material diminution of Executive’s duties, responsibilities or status (except to the extent such diminution results solely from a Change in Control (as defined in the Plan) in which the Company becomes a subsidiary of another entity (or substantially all of the assets of the Company Group are otherwise combined with the assets of the acquirer)); (iii) a material reduction by the Company Group in Executive’s Base Salary or bonus opportunity, unless related to a broad reduction of no more than 15% applying to all similarly-situated employees; or (iv) the relocation of the Principal Place of Business by more than fifty (50) miles. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition Executive believes constitutes Good Reason Executive provides the Company with a written notice (a “Good Reason Notice”) that specifically explains the basis for Executive’s belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of the Company’s receipt of the Good Reason Notice, the Company fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after the Company’s receipt of the Good Reason Notice, and (z) Executive actually terminates his employment (and, if applicable, other service relationship) within sixty (60) days after the Company’s receipt of the Good Reason Notice.

3.6 No Other Benefits Upon Termination. Except as provided in the applicable sub-section of this Section 3 and except for any vested benefits under any tax qualified pension plans of the Company, and continuation of health insurance benefits on the terms and to the extent required by Section 4980B of the Code and Section 601 of the Employee Retirement Income Security Act of 1974, as amended (which provisions are commonly known as “COBRA”), the Company shall have no additional obligations upon the termination of Executive’s employment with the Company.

3.7 Cooperation with Company after Termination of Employment. Following termination of Executive’s employment for any reason, Executive shall reasonably cooperate with the Company in all matters relating to the winding up of his pending work on behalf of the Company including, but not limited to, any litigation in which the Company is involved and the orderly transfer of any such pending work to other employees of the Company as may be designated by the Company. Executive’s obligations hereunder shall be subject to his reasonable availability, and, without limiting any of the restrictions in Section 4 below, the parties shall cooperate to avoid having Executive’s commitment under this Section 3.7 materially interfere with other business obligations of Executive. The Company shall reimburse Executive for any reasonable out-of-pocket expenses he incurs in performing any work on behalf of the Company following the Termination Date.
4. NON-SOLICITATION & NON-COMPETITION

4.1 Non-Compete; Non-Solicit of Customers. Executive agrees that he shall not, directly or indirectly, during the Term and, solely to the extent such act or activity involves the use of the Company Group’s trade secrets and other Confidential Information, for the twelve (12)-month period following the Termination Date, (i) become an employee, director, or independent contractor, stockholder or other owner (other than as (a) a holder of less than 1% of any class of securities of any company (whether public or private) or (b) a holder of a passive equity interest in a private debt or equity investment fund in which Executive does not have the ability to control or exercise any managerial influence over such fund) of, or a consultant to, or perform any services for, any Person that engages in security solutions related to computers, mobile devices and networks (a “Competing Business”), or (ii) solicit or engage or attempt to solicit or engage, as applicable, any customer or supplier of the Company Group in connection with a Competing Business or to terminate or alter in a manner adverse to the Company Group such customer’s or supplier’s relationship with the Company Group. For purposes of this Agreement, “Person” shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

4.2 Non-Solicit of Employees. Executive agrees that he shall not, directly or indirectly, during the Term and for the twelve (12)-month period following the Termination Date solicit or attempt to solicit, as applicable, any Company Group employee, any natural person serving as an independent contractor (or any entity independent contractor controlled by a natural person providing services to the Company Group) (an “Independent Contractor”) or individual who was a Company Group employee or Independent Contractor within the six (6) month period immediately prior thereto to terminate or otherwise alter his, her or its employment or other service relationship with the Company Group.

4.3 Confidential Information. Executive acknowledges and agrees that all information regarding the Company Group or the activity of the Company Group that is not generally known to persons not employed or retained (as employees or as independent contractors or agents) by the Company Group, including without limitation information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company Group (the “Confidential Information”) is established at great expense and protected as confidential information and provides the Company Group with a substantial competitive advantage in conducting its business. Executive further acknowledges and agrees that by virtue of his employment with the Company, he has had access to and will have access to, and has been entrusted with and will be entrusted with Confidential Information, and that the Company Group could suffer great loss and injury if Executive would disclose this information or use it in a manner not specifically authorized by the Company. Therefore, Executive agrees that during the Term and at all times thereafter, he will not, directly or indirectly, either individually or as an employee, agent, partner, shareholder, owner trustee, beneficiary, co-venturer distributor, consultant or in any other capacity, use or disclose or cause to be used or disclosed any
Confidential Information, unless and to the extent that any such information becomes generally known to and available for use by the public other than as a result of Executive’s acts or omissions. Executive shall deliver to the Company at the termination of his employment and the Term, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information, or the business of the Company which he may then possess or have under his control. In addition, Executive agrees that, notwithstanding the foregoing, to the extent Executive is compelled to disclose Confidential Information by lawful service of process, subpoena, court order, or otherwise compelled to do by law, Executive shall, to the extent legally permitted, provide the Company with a copy of the document(s) seeking disclosures of such information promptly upon receipt of such document(s) and prior to Executive’s disclosure of any such information, so that the Company may take such action as it deems to be necessary or appropriate in relation to such subpoena or request and Executive may not disclose any such information until the Company has had the opportunity to take such action. Nothing in this Agreement limits, restricts or in any other way affects Executive’s communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires Executive to provide notice to the Company with notice of the same. Executive cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Executive may be held liable if Executive unlawfully accesses trade secrets by unauthorized means.

4.4 Intellectual Property

(a) If Executive creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including, without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content or audiovisual materials) (“Works”), either alone or with third parties, at any time during Executive’s employment with the Company Group and within the scope of such employment and/or with the use of any the Company Group resources (“Company Works”), Executive shall promptly and fully disclose same to the Company and hereby irrevocably assigns, transfers and conveys, and agrees to assign, transfer and convey, to the maximum extent permitted by applicable law, all rights and intellectual property rights therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) to the Company (or any member of the Company Group so designated by the Company) to the extent ownership of any such rights does not vest originally in the Company Group.

(b) Executive shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company’s expense (but without further remuneration) to assist the Company Group in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company Group’s rights in the Company Works. If the Company is unable for any other reason to secure Executive’s signature on any document for this purpose, then Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive’s agent and attorney in fact, to act for and in Executive’s behalf and stand to execute any documents and to do all other lawfully permitted acts in connection with the foregoing.

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(c) Executive shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with, the Company Group, any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. Executive shall comply with all relevant written policies and guidelines of the Company Group that have been made available to Executive, including, without limitation, policies and guidelines regarding the protection of confidential information and intellectual property and potential conflicts of interest. Executive acknowledges that the Company Group may amend any such policies and guidelines from time to time, and that Executive remains at all times bound by their most current version.

(d) Notwithstanding the foregoing, this Section 4.4 is subject to the provisions of California Labor Code Sections 2870, 2871 and 2872. In accordance with Section 2870 of the California Labor Code, Executive’s obligation to assign Executive’s right, title and interest throughout the world in and to all Company Works does not apply to any Works that Executive developed entirely on his own time without using the Company’s equipment, supplies, facilities, or Confidential Information except for those Company Works that either (A) relate to the business of the Company Group at the time of conception or reduction to practice of the Work, or actual or demonstrably anticipated research or development of the Company Group or (B) result from any work performed by Executive for the Company Group. A copy of California Labor Code Sections 2870, 2871 and 2872 is attached to this Agreement as Exhibit B. Executive shall disclose all Works to the Company, even if Executive does not believe that Executive is required under this Agreement, or pursuant to California Labor Code Section 2870, to assign his interest in such Works to the Company.

4.5 Reasonable Limitation and Severability; Injunctive Relief. The parties agree that the above restrictions are (i) reasonable given Executive’s role with the Company, and are necessary to protect the interests of the Company Group and (ii) completely severable and independent agreements supported by good and valuable consideration and, as such, shall survive the termination of this Agreement for any reason whatsoever. The parties further agree that any invalidity or unenforceability of any one or more of such restrictions on competition shall not render invalid or unenforceable any remaining restrictions on competition. Additionally, should a court of competent jurisdiction determine that the scope of any provision of this Section 4 is too broad to be enforced as written, the parties hereby authorize the court to reform the provision to such narrower scope as it determines to be reasonable and enforceable and the parties intend that the affected provision be enforced as so amended. Executive acknowledges and agrees that the Company’s remedies at law for a breach or threatened breach could be inadequate and the Company could suffer significant harm and irreparable damages as a result of a breach or threatened breach. In recognition of this fact, Executive agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law, the Company, without posting any bond, shall be entitled to cease making any payments or providing any benefit otherwise required by this Agreement and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available. The remedies under this Agreement are without prejudice to the Company’s right to seek any other remedy to which it may be entitled at law or in equity.
5. GENERAL PROVISIONS

5.1 Assignment; Successors. This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by Executive. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume this Agreement in the same manner and to the same extent that the Company would have been required to perform it if no such succession had taken place. As used in the Agreement, “the Company” shall mean both the Company as defined above and any such successor that assumes this Agreement, by operation of law or otherwise.

5.2 Legal Fees. Not later than ten (10) business days of the Effective Date, the Company shall pay or reimburse the Executive for any and all reasonable attorneys’ fees and related costs paid in connection with his negotiation and execution of this Agreement and the LTI Agreements, up to a maximum amount of $50,000.

5.3 Notice. For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below (or such other address as is provided in writing to the other party):

To the Company or Parent
General Counsel
Corporate Headquarters
2821 Mission College Blvd.
Santa Clara, CA 95054

With copies (not constituting notice to):
TPG Global, LLC
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
Attention: Adam Fliss
AFliss@tpg.com

and

Ropes & Gray LLP
The Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Alfred Rose and Michael Roh
Email: alfred.rose@ropesgray.com and michael.roh@ropesgray.com
5.4 Amendment and Waiver. No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing, with such written document explicitly referencing this Agreement, and signed by each of the parties hereto.

5.5 Non-Waiver of Breach. No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.

5.6 Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

5.7 Governing Law. To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined in accordance with the law of Delaware. The parties irrevocably consent to the jurisdiction of, and venue in, the state and federal courts in the State of Delaware, with respect to any matters pertaining to, or arising from, this Agreement.

5.8 Entire Agreement. This Agreement contains all of the terms agreed upon by the Company and Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written, including, without limitation, the Non-Binding Employment Term Sheet dated as of September 7, 2016.

5.9 Headings. Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

5.11 Taxes.
   (a) The Company may withhold from any payment hereunder such state, federal or local income, employment or other taxes and other legally mandated withholdings as it reasonably deems appropriate. The Company makes no representation about the tax treatment or impact of any payment(s) hereunder.

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(b) The intent of the parties is that payments and benefits under this Agreement comply with Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”), to the extent subject thereto, and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered to be in compliance therewith. Notwithstanding anything herein to the contrary: (i) if at the time of Executive’s termination of employment with the Company, Executive is a “specified employee” as defined in Section 409A and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Executive) until the date that is six (6) months and one (1) day following Executive’s termination of employment with the Company (or the earliest date as is permitted under Section 409A); (ii) if any other payments of money or other benefits due to Executive hereunder could cause the application of an accelerated or additional tax under Section 409A, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner determined by the Company that does not cause such an accelerated or additional tax; (iii) to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, Executive shall not be considered to have terminated employment with the Company for purposes of this Agreement and no payment shall be due to Executive under this Agreement until Executive would be considered to have incurred a “separation from service” from the Company within the meaning of Section 409A; and (iv) each amount to be paid or benefit to be provided to Executive pursuant to this Agreement, shall be construed as a separate payment for purposes of Section 409A. To the extent required to avoid an accelerated or additional tax under Section 409A, amounts reimbursable to Executive under this Agreement shall be paid to Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in-kind benefits provided to Executive) during any one year may not affect amounts reimbursable or provided in any subsequent year and may not be liquidated or exchanged for any other benefit. Neither the Company nor any of its employees or representatives shall have any liability to Executive with respect to Section 409A.

(c) Notwithstanding anything to the contrary in Section 3.5, in the event that the COBRA Subsidy would subject the Company Group or Executive to any tax or penalty under the Patient Protection and Affordable Care Act (as amended from time to time, the “ACA”) or Section 105(h) of the Internal Revenue Code of 1986, as amended (“Section 105(h)”), or applicable regulations or guidance issued under the ACA or Section 105(h), Executive and the Company agree to work together in good faith, consistent with the requirements for compliance with or exemption from Section 409A, to restructure such benefit.

5.12 Clawback. Notwithstanding anything in this Agreement to the contrary, Executive acknowledges that the Company Group may be entitled or required by law, the Company Group’s policy (the “Clawback Policy”) or the requirements of an exchange on which the shares of an affiliate of the Company are listed for trading, to recoup compensation paid to Executive pursuant to this Agreement or otherwise, and Executive agrees to comply with any such request or demand for recoupment by the Company; provided that, except as required by law or the requirements of an exchange on which the shares of an affiliate of the Company are
listed for trading, no compensation paid or equity awards granted to Executive, whether pursuant to this Agreement or otherwise, prior to a public offering and sale of the common equity of the Company, a parent company thereof or any successor to either the Company or such parent for cash that is registered under the Securities Act of 1933, as amended, on Form S-1 (or a successor form), shall subject to recoupment under the Clawback Policy. Executive acknowledges that the Clawback Policy may be modified from time to time in the sole discretion of the Company and without the consent of Executive.

5.13 Return of Property. Upon termination of Executive’s employment with the Company for any reason, Executive shall immediately destroy, delete, or return to the Company, at the Company’s option, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in Executive’s possession or control that contain Confidential Information or otherwise relate to the business of the Company Group, and cooperate with the Company regarding the delivery or destruction of any other Confidential Information of which Executive is or becomes aware, and shall otherwise return to the Company all property of the Company Group.

5.14 No Conflict. Executive represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive does not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, and (ii) Executive is not a party to or bound by an employment agreement, non-compete agreement, non-solicit agreement or confidentiality agreement with any other Person which would interfere in any material respect with the performance of his duties hereunder.

5.15 Indemnification. During the Term and thereafter, the Company agrees that it shall indemnify Executive and provide Executive with Directors & Officers liability insurance coverage to the same extent that it indemnifies and/or provides such insurance coverage to the Company’s Board members and other most senior executive officers.

5.16 Survival. Except as otherwise expressly provided in this Agreement, all covenants, representations and warranties, express or implied, in addition to the provisions of Sections 4 and 5 of this Agreement, shall survive the termination of this Agreement.

[signatures on next page]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

MCAFEE EMPLOYEE HOLDINGS, LLC

By:  /s/ Michael Berry  
Name: Michael Berry  
Title: Vice President

FOUNDATION TECHNOLOGY WORLDWIDE LLC

By:  /s/ Michael Berry  
Name: Michael Berry  
Title: Chief Financial Officer

EXECUTIVE

/s/ Christopher D. Young

Christopher D. Young
EMPLOYEE RELEASE OF CLAIMS

FOR AND IN CONSIDERATION OF the severance pay and benefits to be provided to me under the Employment Agreement between me and McAfee Employee Holdings, LLC (the “Company”), Foundation Technology Worldwide LLC (“Parent”) (the “Employment Agreement”), which are conditioned on my signing this Release of Claims and to which I am not otherwise entitled, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, on my own behalf and on behalf of my heirs, executors, administrators, beneficiaries, representatives and assigns, and all others connected with or claiming through me, hereby release and forever discharge the Company, Parent and their current and past parents, subsidiaries and other affiliates and all of their respective past, present and future officers, directors, trustees, shareholders, employees, agents, employee benefit plans, general and limited partners, members, managers, investors, joint venturers, representatives, successors and assigns, and all others connected with any of them, both individually and in their official capacities (collectively, the “Released Parties”), from any and all causes of action, rights and claims of any type or description, known or unknown, which I have had in the past, now have, or might now have, through the date of my signing of this Release of Claims, in any way related to, connected with or arising out of my employment or its termination or the Employment Agreement or pursuant to any federal, state or local law, regulation or other requirement (including without limitation Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or the fair employment practices statute of the state or states in which I was previously employed by the Company or otherwise had a relationship with the Company or any of its subsidiaries or other affiliates, each as amended from time to time) (collectively, the “Released Claims”). This Release of Claims shall not apply to (a) any claim that arises after I sign this Release of Claims, (b) any rights to indemnification that I may have, (c) any claim that may not be waived pursuant to applicable law, (d) my rights to severance pay and benefits under the Employment Agreement as set forth on Schedule I, (e) my rights following the date hereof with respect to any equity interests I hold in Parent or any of its affiliates or (f) my rights to any vested benefits to which I am entitled under the terms of any of the Company’s benefit plans.

In signing this Release, I expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance of such specific waiver of Section 1542, which Section states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

1 Schedule to reflect severance owed at termination.
Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, I expressly acknowledge that this Release is intended to include in its effect, without limitation, all Released Claims which I do not know or suspect to exist in my favor at the time of execution hereof, and that this Release contemplates the extinguishment of such Release Claim or Released Claims.

Notwithstanding the foregoing, nothing in this Release of Claims shall be construed to prohibit me from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency, except that I hereby agree to waive my right to recover monetary damages or other individual relief in any such charge, investigation or proceeding, or any related complaint or lawsuit filed by me or by anyone else on my behalf.

In signing this Release of Claims, I acknowledge my understanding that I may consider the terms of this Release of Claims for up to [twenty-one (21)/forty-five (45)] days from the date I receive it and that I may not sign this Release of Claims until after the date my employment with the Company terminates. I also acknowledge that I am hereby advised by the Company to seek the advice of an attorney prior to signing this Release of Claims; that I have had sufficient time to consider this Release of Claims and to consult with an attorney, if I wished to do so, or to consult with any other person of my choosing before signing; and that I am signing this Release of Claims voluntarily and with a full understanding of its terms.

I further acknowledge that, in signing this Release of Claims, I have not relied on any promises or representations, express or implied, that are not set forth expressly in the Release of Claims. I understand that I may revoke this Release of Claims at any time within seven (7) days of the date of my signing by written notice to the Chairman of the Company’s Board of Directors and that this Release of Claims will take effect only upon the expiration of such seven-day revocation period and only if I have not timely revoked it.

Intending to be legally bound, I have signed this Release of Claims as of the date written below.

Signature: _____________________________________
Name: ________________________________________
Date Signed: ___________________________________

2 To be determined by the Company at the time of separation.
COMPANY RELEASE OF CLAIMS

The Company hereby and forever releases Christopher D. Young (the “Employee”) from any and all claims arising out of or relating to the Employee’s employment or other relationship with the Company and the conclusion of that employment or other relationship that the Company may possess against the Employee arising from any omissions, acts, facts, or damages that have occurred up until and including the date of execution of this release of claims. Notwithstanding anything to the contrary herein, this release of claims shall not apply to any claim (a) that arises after the execution of this release of claims or (b) related to any intentional or grossly negligent act or omission of the Employee.

In signing this release of claims, the Company expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance of such specific waiver of Section 1542, which Section states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Employee (subject to the exceptions noted above), the Company expressly acknowledges that this release of claims is intended to include in its effect, without limitation, all released claims (subject to the exceptions noted above) which the Company does not know or suspect to exist in its favor at the time of execution hereof, and that this release of claims contemplates the extinguishment of such released claims.

Intending to be legally bound, the Company has signed this Release of Claims as of the date written below.

Signature: _____________________________________
Name: ________________________________________
Title: _________________________________________
Date Signed: ___________________________________
You are hereby notified that the Employment Agreement to which this Exhibit B is attached does not apply to any invention which qualifies fully for exclusion under the provisions of Section 2870 of the California Labor Code, and that the provisions of Section 4.4 of the Employment Agreement are subject to the provisions of Sections 2870, 2871 and 2872 of the California Labor Code.

The following is the text of California Labor Code Sections 2870, 2871 and 2872:

SECTION 2870
(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

SECTION 2871
No employer shall require a provision made void and unenforceable by Section 2870 as a condition of employment or continued employment. Nothing in this article shall be construed to forbid or restrict the right of an employer to provide in contracts of employment for disclosure, provided that any such disclosures be received in confidence, of all of the employee’s inventions made solely or jointly with others during the term of his or her employment, a review process by the employer to determine such issues as may arise, and for full title to certain patents and inventions to be in the United States, as required by contracts between the employer and the United States or any of its agencies.

SECTION 2872
If an employment agreement entered into after January 1, 1980 contains a provision requiring the employee to assign or offer to assign any of his or her rights in any invention to his or her employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention which qualifies fully under the provisions of Section 2870. In any suit or action arising thereunder, the burden of proof shall be on the employee claiming the benefits of its provisions.
EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”), is made and entered into as of January 20, 2020, by and among McAfee, LLC (the “Company”), Foundation Technology Worldwide LLC (“Parent”) and Peter Leav (“Executive”). This Agreement shall become effective as of the Effective Date (as defined below).

WHEREAS, the Company desires to employ Executive on the terms and conditions contained herein; and

WHEREAS, Executive desires to be employed by and render services to the Company upon and subject to the terms, conditions and other provisions set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the adequacy of all of which consideration is hereby acknowledged, the parties hereby agree as follows:

1. EMPLOYMENT

1.1 Agreement and Term. The Company hereby agrees to employ Executive, and Executive hereby accepts such employment and agrees to render such services to the Company, on the terms and conditions set forth in this Agreement. Unless terminated earlier as set forth in Section 3 herein, Executive’s employment and the term under this Agreement shall commence on February 3, 2019 (the “Effective Date”) and shall continue until terminated in accordance with Section 3 below (the “Term”).

1.2 Position and Duties. Except as otherwise provided in this Agreement, during the Term of this Agreement, Executive shall serve as the Chief Executive Officer of the Company and Parent, and shall report directly to the Board of Managers of Parent (the “Board”). In addition, for so long as Executive remains the Chief Executive Officer of Parent, Executive shall serve as a member of the Board. Executive’s principal work location shall be at the Company’s offices in Santa Clara, California or such other location as Executive and the Company shall mutually agree, (hereinafter the “Principal Place of Business”), provided that Executive may be required to travel as reasonably necessary in order to perform his duties and responsibilities hereunder. Executive shall carry out his duties and responsibilities at all times in compliance with the written policies and procedures of Parent, and following an initial Public Offering (as defined in Parent’s Amended and Restated Limited Liability Company Agreement dated as of April 3, 2017 (as amended from time to time, the “LLC Agreement”)), the Issuer (as defined in the LLC Agreement) or any of their respective subsidiaries (collectively and each individually a member of, the “Company Group”) that have been made available to Executive, as in effect from time to time. Executive shall also perform such other duties as reasonably requested by the Board, including service as an officer or director of any other member of the Company Group without additional compensation. During the Term of this Agreement, Executive shall use his best business efforts to serve the Company Group faithfully, diligently and competently and to the best of his ability, and to devote his full time business hours, energy, ability, attention and skill to the business of the Company Group; provided, however, that the foregoing is not intended to preclude Executive from noncompetitive activities that are conducted outside normal business hours and are permitted under Section 1.3 hereof.
1.3 Outside Activities. During the Term of this Agreement, (i) Executive may continue to serve in the positions listed on Annex I hereto, (ii) serve on the board of directors with the prior written consent of the Board (not to be unreasonably withheld), Executive may serve on the board of directors of a for-profit entity and as a director or advisor of other not-for-profit educational, welfare, social, religious and civic organizations, and (iii) Executive may perform charitable and other activities, and manage his personal investments; provided, however, that in the case of either (i) or (ii) such activities do not materially interfere with the performance of his duties hereunder and otherwise to the Company Group and are not in conflict or competitive with, or adverse to, the interests of the Company Group.

2. COMPENSATION AND BENEFITS; EXPENSES

2.1 Salary. The Company shall compensate and pay Executive for his services a Base Salary at a rate equivalent to $900,000 per year, less payroll deductions and all required tax withholdings, which salary shall be payable in accordance with the Company’s customary payroll practices applicable to its executives. The Base Salary shall be subject to annual review for possible increase (but not decrease) by the Board or its Compensation Committee (the “Committee”) based on individual and Company performance. The term “Base Salary” shall refer to Executive’s annual base salary as may be in effect from time to time.

2.2 Bonus. With respect to each fiscal year of the Company ending during the Term and subject to the achievement of applicable performance goals, based on corporate, business unit and/or individual performance, to be reasonably established by the Board or the Committee in consultation with the Executive, Executive shall be entitled to participate in the Company’s annual incentive plan, under which Executive shall be eligible to earn an annual bonus (the “Annual Bonus”) with a target amount equal to 150% of the Base Salary (the “Target Bonus”), subject to Executive being employed with the Company on the date that the Annual Bonus is paid (except as otherwise provided in Section 3). The Company shall pay earned Annual Bonuses to Executive no later than 2½ months following the end of each fiscal year. The Target Bonus shall be subject to review for possible increase (but not decrease) by the Board or the Committee based on individual and Company performance at the Board’s or the Committee’s sole discretion.

2.3 Employee Benefits. During the Term of this Agreement, to the extent eligible under the applicable plans or programs and applicable law, Executive shall be entitled to participate in the employee benefits plans and programs made available to executive level employees of the Company generally, such as health, medical, dental, disability and other insurance coverage and group retirement and deferred compensation plans. The terms and conditions of Executive’s participation in any employee benefit plan or program shall be subject to the terms and conditions of such plan or program, as may be modified by the Company from time to time. Nothing in this Agreement shall preclude the Company from amending or terminating any employee benefit plan or program, subject to the terms of the applicable plan or program.
2.4 Vacations. Executive shall be entitled to vacation in accordance with the Company Group’s vacation policies as in effect from time to time. Vacation may be taken at such times and intervals as Executive shall determine, subject to the business needs of the Company Group.

2.5 Long-Term Incentives.

(a) As soon as practicable following the Effective Date, (i) Parent will grant Executive restricted share units payable in Class A Units of Parent (such restricted share units, the “RSUs”, and such Class A Units the “Class A Units”) with an aggregate grant date Fair Market Value (as defined in the LLC Agreement) of $16.2 million, but with respect to no less than 468,614 Class A Units, and Management Incentive Units of Parent (the “Management Incentive Units”) with an aggregate per unit Management Incentive Unit Return Threshold (as defined in the LLC Agreement) of $10.8 million, but for no less than 312,409 Management Incentive Units, in each case, pursuant to the Foundation Technology Worldwide LLC 2017 Management Incentive Plan (the “Plan”), and (ii) Executive shall purchase Class A Units having an aggregate Fair Market Value of $500,000 from Parent at a price per Class A Unit equal to the Fair Market Value of a Class A Unit on the date of purchase. The specific terms and conditions of the RSUs and Management Incentive Units shall be set forth in the Plan, the grant agreement governing such awards and the LLC Agreement and the specific terms and conditions of the Class A Units purchased by Executive shall be set forth in a subscription agreement between Parent and Executive and the LLC Agreement. As a condition to receiving the Class A Units, RSUs and Management Incentive Units, Executive shall be required to become party to the LLC Agreement (together with the Plan and the applicable grant agreements and subscription agreement, the “Equity Agreements”, the forms of which are attached hereto).

(b) In connection with any initial Public Offering, the Company Group or such affiliate may cause the RSUs, the Class A Units and/or the Management Incentive Units, at the election of the Board or the Committee, to be exchanged for shares of Issuer stock and/or, in the case of RSUs and Management Incentive Units, awards based on or convertible into Issuer stock, in any case, having the same value, and subject to the same vesting and other terms and conditions as of immediately following the exchange as such awards had as of immediately prior to such exchange. Further, in connection with an initial Public Offering, shares of Issuer stock received or to be received by Executive (or his permitted transferees) shall be subject to a lock-up period (which, shall not be longer than any lock-up period applicable to the TPG Investor (as defined in the LLC Agreement)) described in a lock-up agreement, in the form agreed upon between Issuer and the underwriters in connection with the initial Public Offering and, following the expiration of such lock-up period, During the Term and for twelve (12) months thereafter, Executive shall only be entitled to transfer such shares of Issuer stock (to the extent vested) if and when (i) shares of Issuer stock held by investment funds affiliated with TPG are sold, with the number of shares of Issuer stock eligible to be sold by Executive (and his permitted transferees) upon each sale by such investment funds determined on a pro rata basis with the number of shares Issuer stock sold by such investment funds at such time based on their respective holdings of Issuer stock at the time
of such sale and (ii) otherwise approved by the TPG Investor in writing. Subject to the other restrictions set forth herein or in the Equity Agreements, following an initial Public Offering, all sales by Executive will be pursuant to a pre-approved trading plan pursuant to Rule 10b-5-1 under the Securities and Exchange Act of 1934, as amended, or when Executive is not otherwise in possession of material nonpublic information. In connection with the closing of an initial Public Offering, Parent and Executive shall enter into a registration rights agreement with respect to any shares of Issuer stock held by or to be received by Executive (or his permitted transferees), which shall provide for customary piggyback registration rights with respect to such shares on secondary offerings, without cutbacks that are not proportionate to any cutbacks that apply to investment funds affiliated with TPG. In furtherance of the foregoing, Executive agrees to take such actions and execute such documents as are reasonably requested by the Board or the Committee to effectuate such exchange, registration rights and/or transfer restrictions.

(c) Notwithstanding anything to the contrary in the Equity Agreements, (i) if Executive’s employment or other service with the Company Group terminates for any reason, Executive’s vested Management Incentive Units and Class A Units received in respect of the RSUs (but not, for the avoidance of doubt, any Class A Units purchased by Executive) shall be subject to repurchase as described in Section 13(a) of the LLC Agreement, (ii) if Executive’s employment or other service with the Company Group is terminated by the Company Group for Cause (as defined hereunder) (or Executive’s employment terminates under circumstances when Cause exists) or Executive materially violates the restrictive covenants in Section 4 of this Agreement, Management Incentive Units and Class A Units (but not, for the avoidance of doubt, any Class A Units purchased by Executive) received on settlement of RSUs will be forfeited for no consideration and Executive will be required to repay any amounts received in the preceding twelve (12) months in respect of Executive’s Management Incentive Units, RSUs and/or Class A Units received in respect of RSUs, in each case, after Executive has been given notice and, to the extent the circumstances constituting Cause or such breach are reasonably susceptible to cure, has failed to cure within ten (10) days of receiving such notice, and (iii) if Parent exercises its call rights pursuant to Section 13 of the LLC Agreement in respect of any of Executive’s Class A Units or Management Incentive Units or the Board otherwise makes a determination of Fair Market Value of Class A Units or Management Incentive Units pursuant to the Equity Agreements in connection with determining the number of Class A Units withheld under any net tax withholding arrangement for RSUs or the number of additional RSUs credited to Executive in connection with any distribution on Class A Units, and Executive believes in good faith that the Fair Market Value of such Class A Units or Management Incentive Units is greater than the amount determined by the Board, then Executive may deliver a written objection notice to Parent within thirty (30) days of such determination (an “Objection Notice”). If Executive timely delivers such an Objection Notice, then Parent will promptly engage a third-party independent valuation expert selected by Parent and consented to by Executive (which consent shall not be unreasonably withheld, delayed or hindered) (the “Independent Appraiser”) to deliver a written determination of the fair market value of such Class A Units and/or Management Incentive Units as of the date the applicable notice of repurchase was delivered (such determination to include a report setting forth all material analyses used in arriving at such determination, which for the avoidance of doubt, such analyses shall not include any discount for lack of marketability or lack or of majority interest) within sixty (60) days of being engaged. Such determination shall be deemed to be the Fair Market Value of Executive’s Class A Units and/or Management Incentive Units.
Units and shall be final and binding on the parties. If such Fair Market Value determined by the Independent Appraiser is more than 10% higher than the Fair Market Value previously determined by the Board, then the costs and expenses of the Independent Appraiser shall be borne by Parent. If such Fair Market Value determined by such Independent Appraiser is not more than 10% higher than the Fair Market Value previously determined by the Board, then the costs and expenses of the Independent Appraiser shall be borne by Executive (which costs and expenses may, in whole or in part, be deducted from the cash or other consideration otherwise deliverable to Executive in respect of the repurchase of such Class A Units and/or Management Incentive Units or any other payment owing to Executive by the Company or Parent).

(d) Notwithstanding anything to the contrary in the Equity Agreements:

(i) Executive shall be entitled to the tag-along rights described in Section 12 of the LLC Agreement (which rights shall apply to any Transfer by the TPG Investor to the Intel Investor (as such terms are defined in the LLC Agreement) or, in the event carry is payable to the TPG Investor or its affiliates in connection with such Transfer, to any Transfer to an affiliate of the TPG Investor) with respect to all vested Class A Units, vested RSUs and vested Management Incentive Units held by Executive (or his permitted transferees) and all Class A Units and Management Incentive Units (after otherwise applying the terms set forth in the Equity Agreements) shall be subject to the drag-along obligations set forth in such section, in each case, in accordance with the terms set forth therein.

(ii) In the event of a Drag-Along Sale (as defined in the LLC Agreement), Executive shall not receive a greater proportion of non-cash consideration than the TPG Investor in respect of his Class A Units or Management Incentive Units sold in such transaction.

(iii) During the Term, Executive shall be entitled to the information rights set forth in Section 9.7 of the LLC Agreement.

(iv) Executive shall be entitled to the pre-emptive rights described in Section 14 of the LLC Agreement with respect to his vested Class A Units and Class A Units underlying his vested RSUs.

(v) The call option set forth in Section 13.1(a) of the LLC Agreement shall lapse upon the consummation of an initial Public Offering and, in the event of any repurchase delay described in Section 13.2 of the LLC Agreement, the Fair Market Value of the applicable units shall be determined as of the date of the repurchase.

(vi) Executive’s Management Incentive Units and RSUs may only be adjusted in accordance with Section 9(a) of the Plan on an equitable basis.

(vii) The provisions in Section 9(b) of the Plan shall not be applied to abridge Executive’s rights set forth herein or in any of his individual Equity Agreements.

(viii) For purposes of Executive’s Management Incentive Units and RSUs, Section 14 of the Plan shall be deemed to include a reference to Section 4 of this Agreement, and Section 4 of this Agreement shall control in the event of any inconsistency with the terms set forth therein.

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(ix) For purposes of Executive’s Management Incentive Units and RSUs and Section 3.6 below, the term “Change in Control” shall also include:

A. Prior to an initial Public Offering (and not in connection with any restructuring taken in connection with an initial Public Offering), the TPG Majority (as defined in the LLC Agreement) ceasing to have the authority pursuant to the LLC Agreement to appoint and remove fifty percent (50%) or more of the members of the Board, whether as a TPG Manager (as such term is defined in the LLC Agreement) or an Independent Manager (as such term is defined in the LLC Agreement) or otherwise;

B. Following an initial Public Offering, the acquisition by any person or group (within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended) of equity securities representing thirty-five percent (35%) or more of the voting power of Issuer provided that (i) following such acquisition such person or group holds outstanding equity securities representing more of the voting power of Issuer than the outstanding equity securities then held by the TPG Investor, (ii) following such acquisition, neither the TPG Investor nor any affiliates of TPG Global, LLC (excluding portfolio companies) have the right to designate a majority of the nominees to the board of directors of the Issuer, (iii) if such person or group is or includes the TPG Investor or any affiliate of TPG Global, LLC (excluding portfolio companies), the Issuer, Parent or any subsidiary of Issuer or Parent (all such parties, the “Excluded Parties”), all equity securities held by the Excluded Parties shall be excluded from the equity securities held by such person or group for purposes of this definition, and (iv) if such person or group is or includes the Intel Investor or any of its affiliates, following such acquisition, such person or group holds outstanding equity securities entitling it to designate a majority of the nominees to the board of directors of Issuer.
2.6 Business Expenses. The Company shall reimburse Executive or otherwise provide for or pay for reasonable out-of-pocket expenses incurred by Executive in furtherance of or in connection with the business of the Company Group, including, but not limited to, travel and entertainment expenses commensurate with his duties hereunder (including attendance at industry conferences), subject to the Company Group’s policies as in effect from time to time, including without limitation such reasonable documentation and other limitations as may be reasonably established or required by the Company Group.

3. TERMINATION

3.1 Notice of Termination. With the exception of termination of Executive’s employment due to Executive’s death, any purported termination of Executive’s employment by the Company for any reason, including without limitation for Cause or Disability, or by Executive for any reason, shall be communicated by a written “Notice of Termination” to the other party. “Notice of Termination” means a dated notice that (i) indicates the specific termination provision in this Agreement relied upon and (ii) specifies a Termination Date, except in the case of the Company’s termination of Executive’s employment for Cause, for which the Termination Date may be the date of the notice. “Termination Date” means (i) if Executive’s employment is terminated for Cause or Disability, the date specified in the Notice of Termination, (ii) in the case of termination of employment due to death, the date of Executive’s death, or (iii) if Executive’s employment is terminated for any other reason, the date on which a Notice of Termination is given or as specified in such notice which, in the event of a termination by Executive without Good Reason, shall not be less than thirty (30) days after such notice, unless otherwise agreed to by the parties. For purposes of clarification, the Term shall end on the Termination Date.

3.2 Termination Due to Death or Disability. If Executive’s employment is terminated by reason of Executive’s death or by the Company due to Disability, Executive or his estate shall be entitled to receive: (a) Executive’s earned but unpaid Base Salary accrued through the Termination Date; (b) an amount for reimbursement, paid within thirty (30) days following submission by Executive (or if applicable, Executive’s estate) to the Company of appropriate supporting documentation for any unreimbursed business expenses properly incurred prior to the Termination Date by Executive pursuant to Section 2.6 and in accordance with Company Group policies; (c) such employee benefits, if any, to which Executive (or, if applicable, Executive’s estate) or his dependents may be entitled under the employee benefit plans or programs of the Company Group, paid in accordance with the terms of the applicable plans or programs (the amounts described in clauses (a) through (c) hereof being referred to as the “Accrued Rights”). In addition to the Accrued Rights, if Executive’s employment is terminated by reason of Executive’s death or by the Company due to Disability, subject, in the case of a termination due to Disability, to Executive’s continued compliance with this Agreement and the Equity Agreements, and Executive’s (or his estate’s or legal representative’s) execution, delivery and non-revocation of an effective release of all claims against the Company Group in
substantially the form attached hereto as Exhibit A (the “Release”) within the sixty (60) day period following the date of the termination of Executive’s employment (the “Release Period”), Executive or his estate shall be entitled to receive (x) any earned but unpaid Annual Bonus related to the completed fiscal year preceding the fiscal year in which termination of employment occurs and (y) an Annual Bonus for the year in which the Termination Date occurs, with payment based on actual performance during the year of termination, pro-rated to reflect the number of days during the bonus year in which Executive was employed by the Company, in each case, payable in accordance with regular payroll practices, less applicable withholdings and taxes, on the later of (x) the first regular payroll date following the date on which the Release becomes fully effective and (y) the date annual bonuses with respect to such fiscal year are payable to other executives of the Company, but in no event later than two and one-half months following the end of the year of termination (the amounts described in clauses (x) and (y) hereof being referred to as the “Bonus Severance”). For purposes hereof, “Disability” shall be determined in accordance with the Company’s long-term disability plan as then in effect, whether or not Executive participates in such plan.

3.3 Termination by Executive for Other Than Good Reason. In the event Executive terminates his employment for other than Good Reason, Executive shall be entitled to receive the Accrued Rights.

3.4 Termination by the Company for Cause. In the event the Company terminates his employment for Cause (or Executive’s employment terminates under circumstances where Cause exists), Executive shall be entitled to receive the Accrued Rights.

3.5 Termination by the Company without Cause or by Executive for Good Reason. If Executive’s employment is terminated by the Company without Cause, or by Executive for Good Reason, in either case, other than within two years following a Change in Control (as defined in the Plan, as modified by Section 2.5(d)(ix)) or under circumstances where Cause exists, Executive shall be entitled, in addition to the Accrued Rights and subject to Executive’s continued material compliance with this Agreement and the Equity Agreements, and Executive’s execution, delivery and non-revocation of the Release within the Release Period, to receive:

(a) equal or substantially equal payments over the eighteen (18)-month period following the date of termination, in an aggregate amount equal to one and one-half times (1.5x) the sum of (x) Executive’s then-current Base Salary plus (y) Executive’s Target Bonus, with such amounts to be paid in accordance with regular payroll practices, less applicable withholdings and taxes, beginning on the first regular payroll date following the date on which the Release becomes fully effective (and with the first payment to include all payments that would otherwise have been made prior to such date);

(b) the Bonus Severance; and

(c) provided that Executive timely elects COBRA (as defined below) coverage, a taxable subsidy (the “COBRA Subsidy”) to participate in the Company’s medical, dental and vision plans, in an amount, on an after-tax basis, that is equal to the employer-paid portion of the premium equivalent for active employees who elect the same type of coverage.
(e.g., individual only, individual plus family, etc.) through the earlier of the end of the eighteen (18)-month period immediately following the Termination Date and the time at which Executive becomes eligible for group health coverage from another employer, with such subsidies payable by the Company on a monthly basis in substantially equal installments not later than the end of the month to which they relate. Executive must notify the Company within seven (7) days of learning that he will become eligible to for group health coverage from another employer.

To the extent any payments made of contemplated hereunder constitute nonqualified deferred compensation, within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A") and if the Release Period spans two (2) calendar years, then such payments that would otherwise have been made prior to the end of the Release Period will be made, after the release becomes irrevocable, in the form of a lump sum on the first payroll date that occurs in the second calendar year.

(i) “Cause” means, as determined by the Board in its reasonable good faith judgment, Executive’s: (i) conviction of an act of material fraud or dishonesty; (ii) intentional refusal or willful failure to carry out the lawful and reasonable instructions of the Board; (iii) commission of a felony or a misdemeanor crime involving moral turpitude (where moral turpitude means so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community); (iv) gross misconduct or gross negligence in connection with the performance of his duties; (v) material breach of any provision of this Agreement or any other employment or restrictive covenant agreement with the Company; (vi) material violation of any material written policy or written code of conduct of the Company Group that has been made available to Executive; (vii) material breach of fiduciary duty (including duty of loyalty) to the Company Group; or (viii) willful failure to cooperate with the Company Group in any investigation or formal proceeding or being found liable in a Securities and Exchange Commission (the "SEC") enforcement action or otherwise being disqualified from Executive’s job.

(ii) “Good Reason” shall mean, without Executive’s consent: (i) a material breach by the Company Group of this Agreement; (ii) a material diminution of Executive’s duties, responsibilities or status (other than as a result of the sale, license or other divestiture of a business line or division or business segment); (iii) a reduction by the Company Group in Executive’s Base Salary or Target Bonus; or (iv) the relocation of the Principal Place of Business by more than fifty (50) miles. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition Executive believes constitutes Good Reason Executive provides the Company with a written notice (a “Good Reason Notice”) that specifically explains the basis for Executive’s belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of the Company’s receipt of the Good Reason Notice, the Company fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after the Company’s receipt of the Good Reason Notice, and (z) Executive actually terminates his employment (and, if applicable, other service relationship) within sixty (60) days following the end of such cure period.
3.6 Change in Control Termination. If Executive's employment is terminated by the Company without Cause, or by Executive for Good Reason, in either case, within two years following a Change in Control and other than under circumstances where Cause exists, in lieu of any severance benefits described in Section 3.5 above, Executive shall be entitled, in addition to the Accrued Rights and subject to Executive’s continued material compliance with this Agreement and the Equity Agreements, and Executive’s execution, delivery and non-revocation of the Release within the Release Period, to receive:

(a) equal or substantially equal payments over the twenty four (24)-month period following the date of termination, in an aggregate amount equal to two times (2.0x) the sum of (x) Executive’s then-current Base Salary plus (y) Executive’s Target Bonus, with such amounts to be paid in accordance with regular payroll practices, less applicable withholdings and taxes, beginning on the first regular payroll date following the date on which the Release becomes fully effective (and with the first payment to include all payments that would otherwise have been made prior to such date);

(b) the Bonus Severance; and

(c) provided that Executive timely elects COBRA (as defined below) coverage, a COBRA Subsidy to participate in the Company’s medical, dental and vision plans, in an amount, on an after-tax basis, that is equal to the employer-paid portion of the premium equivalent for active employees who elect the same type of coverage (e.g., individual only, individual plus family, etc.) through the earlier of the end of the twenty-four (24)-month period immediately following the Termination Date and the time at which Executive becomes eligible for group health coverage from another employer, with such subsidies payable by the Company on a monthly basis in substantially equal installments not later than the end of the month to which they relate. Executive must notify the Company within seven (7) days of learning that he will become eligible to for group health coverage from another employer.

3.7 No Other Benefits Upon Termination. Except as provided in the applicable sub-section of this Section 3 and except for any vested benefits under any tax qualified pension plans of the Company, and continuation of health insurance benefits on the terms and to the extent required by Section 4980B of the Code and Section 601 of the Employee Retirement Income Security Act of 1974, as amended (which provisions are commonly known as “COBRA”), the Company shall have no additional obligations upon the termination of Executive’s employment with the Company.

3.8 No Mitigation. For the avoidance of doubt, Executive shall have no duty to seek employment following termination of employment or otherwise to mitigate damages. The amounts or benefits payable or available to Executive under this Agreement shall not be reduced by any amount Executive may earn or receive from employment with another employer or from any other source.

3.9 Cooperation with Company after Termination of Employment. Following termination of Executive’s employment for any reason, Executive shall reasonably cooperate with the Company Group in all matters relating to the winding up of his pending work on behalf of the Company Group including, but not limited to, any litigation in which the Company Group is involved and the orderly transfer of any such pending work to other employees of the Company Group as may be designated by the Company. Executive’s obligations hereunder shall
be subject to his reasonable availability, and, without limiting any of the restrictions in Section 4 below, the parties shall cooperate to avoid having Executive’s commitment under this Section 3.7 materially interfere with other personal and business commitments or obligations of Executive. The Company Group shall reimburse Executive for any reasonable out-of-pocket expenses he incurs in performing any work on behalf of the Company Group following the Termination Date. In addition, if more than incidental cooperation is required at any time after the Termination Date, Executive shall be paid an amount to be mutually agreed on by the Executive and the Company Group.

4. NON-SOLICITATION & NON-COMPETITION

4.1 Non-Compete; Non-Solicit of Customers. Executive agrees that he shall not, directly or indirectly, during the Term and for the eighteen (18)-month period following the Termination Date, (i) become an employee, director, or independent contractor, stockholder or other owner (other than as (a) a holder of less than 1% of any class of securities of any company (whether public or private) or (b) a holder of a passive equity interest in a private debt or equity investment fund in which Executive does not have the ability to control or exercise any managerial influence over such fund) of, or a consultant to, or perform any services for, any of the following companies: Avast, Broadcom, Crowdstrike, NortonLifeLock, and Trend Micro (each, a “Competitor”), or (ii) solicit or engage or attempt to solicit, any customer of the Company or prospective customer that has been actively pursued by the Company within the twelve (12) month period preceding the Termination Date (provided that Executive has knowledge of such pursuit or such prospective customer is or could reasonably be expected to bring material benefit to the Company or its affiliates) to terminate or alter in a manner adverse to the Company Group such current or prospective customer’s relationship with the Company Group. For purposes of this Agreement, “Person” shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

4.2 Non-Solicit of Employees. Executive agrees that he shall not, directly or indirectly, during the Term and for the eighteen (18)-month period following the Termination Date, solicit or attempt to solicit, as applicable, any Company Group employee or individual who was a Company Group employee within the six (6) month period immediately prior thereto to terminate or otherwise alter his, her or its employment with the Company Group.

4.3 Confidential Information. Executive acknowledges and agrees that all information regarding the Company Group or the activity of the Company Group that is not generally known to persons not employed or retained (as employees or as independent contractors or agents) by the Company Group, including without limitation information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company Group (the “Confidential Information”) is established at great expense and protected as confidential information and provides the Company Group with a substantial competitive advantage in conducting its business. Executive further acknowledges and agrees that by virtue of his employment with the Company, he will have access to, and will be entrusted with Confidential Information, and that the Company Group could suffer great loss and injury if Executive would disclose this information or use it in a manner not specifically authorized by the
Company. Therefore, Executive agrees that during the Term and at all times thereafter, he will not, directly or indirectly, either individually or as an employee, agent, partner, shareholder, owner trustee, beneficiary, co-venturer, distributor, consultant, or in any other capacity, use or disclose or cause to be used or disclosed any Confidential Information, unless and to the extent that any such information becomes generally known to and available for use by the public other than as a result of Executive’s acts or omissions, or Executive is required to disclose by applicable law, regulation or legal process. Executive shall deliver to the Company at the termination of his employment, or at any other time the Company may reasonably request, all memoranda, notes, plans, reports, computer tapes, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information, or the business of the Company which he may then possess or have under his control. In addition, Executive agrees that, notwithstanding the foregoing, to the extent Executive is compelled to disclose Confidential Information by lawful service of process, subpoena, court order, or otherwise compelled to do by law, Executive shall, to the extent legally permitted, provide the Company with a copy of the document(s) seeking disclosures of such information promptly upon receipt of such document(s) and prior to Executive’s disclosure of any such information, so that the Company may take such action as it reasonably deems to be necessary or appropriate in relation to such subpoena or request and Executive may not disclose any such information until the Company has had the opportunity to take such action. Nothing in this Agreement limits, restricts or in any other way affects Executive’s communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires Executive to provide notice to the Company with notice of the same. Executive cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Executive may be held liable if Executive unlawfully accesses trade secrets by unauthorized means.

4.4 Intellectual Property

(a) If Executive creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including, without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content or audiovisual materials) (“Works”), either alone or with third parties, at any time during Executive’s employment with the Company Group and within the scope of such employment and/or with the use of any the Company Group resources (“Company Works”), Executive shall promptly and fully disclose the same to the Company and hereby irrevocably assigns, transfers and conveys, and agrees to assign, transfer and convey, to the maximum extent permitted by applicable law, all rights and intellectual property rights therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) to the Company (or any member of the Company Group so designated by the Company) to the extent ownership of any such rights does not vest originally in the Company Group. All copyrightable works that Executive creates during employment with the Company Group will be considered “work made for hire” and will, upon creation, be owned exclusively by the Company (or an affiliate designated by the Company).
(b) Executive shall take all reasonably requested actions and execute all reasonably requested documents (including any licenses or assignments required by a government contract) at the Company Group’s expense (but without further remuneration) to assist the Company Group in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company Group’s rights in the Company Works. If the Company is unable for any other reason to secure Executive’s signature on any document for this purpose, then Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive’s agent and attorney in fact, to act for and in Executive’s behalf and stand to execute any documents and to do all other lawfully permitted acts in connection with the foregoing.

(c) Executive shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with, the Company Group, any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. Executive shall comply with all relevant written policies and guidelines of the Company Group that have been made available to Executive, including, without limitation, policies and guidelines regarding the protection of confidential information and intellectual property and potential conflicts of interest. Executive acknowledges that the Company Group may amend any such policies and guidelines from time to time, and that Executive remains at all times bound by their most current version.

(d) Notwithstanding the foregoing, this Section 4.4 is subject to the provisions of California Labor Code Sections 2870, 2871 and 2872. In accordance with Section 2870 of the California Labor Code, Executive’s obligation to assign Executive’s right, title and interest throughout the world in and to all Company Works does not apply to any Works that Executive developed entirely on his own time without using the Company’s equipment, supplies, facilities, or Confidential Information except for those Company Works that either (A) relate to the business of the Company Group at the time of conception or reduction to practice of the Work, or actual or demonstrably anticipated research or development of the Company Group or (B) result from any work performed by Executive for the Company Group. A copy of California Labor Code Sections 2870, 2871 and 2872 is attached to this Agreement as Exhibit B. Executive shall disclose all Works to the Company, even if Executive does not believe that Executive is required under this Agreement, or pursuant to California Labor Code Section 2870, to assign his interest in such Works to the Company.

4.5 Reasonable Limitation and Severability; Injunctive Relief. The parties agree that the above restrictions are (i) reasonable given Executive’s role with the Company, and are necessary to protect the interests of the Company Group and (ii) completely severable and independent agreements supported by good and valuable consideration and, as such, shall survive the termination of this Agreement for any reason whatsoever. The parties further agree that any invalidity or unenforceability of any one or more of such restrictions on competition shall not render invalid or unenforceable any remaining restrictions on competition. Additionally, should a court of competent jurisdiction determine that the scope of any provision
of this Section 4 is too broad to be enforced as written, the parties hereby authorize the court to reform the provision to such narrower scope as it
determines to be reasonable and enforceable and the parties intend that the affected provision be enforced as so amended. Executive acknowledges and
agrees that the Company’s remedies at law for a breach or threatened breach could be inadequate and the Company could suffer significant harm and
irreparable damages as a result of a breach or threatened breach. In recognition of this fact, Executive agrees that, in the event of such a breach or
threatened breach, in addition to any remedies at law or under the Equity Agreements or any other agreement between Executive and any member of the
Company Group, the Company, without posting any bond, shall be entitled to cease making payments or providing any benefit otherwise required by
this Agreement and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any
other equitable remedy which may then be available. The remedies under this Agreement are without prejudice to the Company’s right to seek any other
remedy to which it may be entitled at law or in equity.

5. GENERAL PROVISIONS

5.1 Assignment; Successors. This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, assigns,
heirs, executors, administrators and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by
Executive. The Company may at any time assign all or any of its obligations under this Agreement to any other member of the Company Group, subject
to Executive’s consent (not to be unreasonably withheld), provided that no such consent shall be required to assign all or any of its obligations under this
Agreement to Issuer or in order to cause Executive to remain employed by a member of the Company Group following any sale or license of a Divested
Business. The Company shall require any such assignee or successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all
or substantially all of the business and/or assets of the Company to assume this Agreement in the same manner and to the same extent that the Company
would have been required to perform it if no such succession had taken place. As used in the Agreement, “the Company” shall mean both the Company
as defined above and any such successor that assumes this Agreement, by operation of law or otherwise, and the terms “Board” and “Committee” shall
refer to the Board of Managers and Compensation Committee of Parent, to the board of directors or managers and/or compensation or similar committee
of any successor or assign, including Issuer.

5.2 Legal Fees. Not later than ten (10) business days of the Effective Date, the Company shall pay or reimburse Executive for any and all
reasonable attorneys’ fees and related costs paid in connection with his negotiation and execution of this Agreement and the Equity Agreements, up to a
maximum amount of $40,000.

5.3 Notice. For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall
be deemed to have been duly given when delivered in person or mailed by certified or registered mail, return receipt requested, postage prepaid,
addressed to the respective addresses set forth below (or such other address as is provided in writing to the other party):
5.4 Amendment and Waiver. No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing, with such written document explicitly referencing this Agreement, and signed by each of the parties hereto.

5.5 Non-Waiver of Breach. No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.

5.6 Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

5.7 Governing Law. To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined in accordance with the law of Delaware, without regard to any conflict of law provisions thereof. The parties irrevocably consent to the jurisdiction of, and venue in, the state and federal courts in the State of Delaware, with respect to any matters pertaining to, or arising
from, this Agreement, the Equity Agreements or Executive’s employment by the Company Group. By signing this Agreement, Executive acknowledges and agrees that he has been individually represented by legal counsel in negotiating the terms of this Agreement and the Equity Agreements (including without limitation as to all restrictive covenants contained herein, the remedies for breaches of such covenants, and the governing law and forum that will apply in the event of any disputes related to such restrictive covenants).

5.8 Entire Agreement. This Agreement contains all of the terms agreed upon by the Company and Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written, including, without limitation, the CEO Employment Term Sheet dated as of January 7, 2020.

5.9 Headings. Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

5.11 Taxes.
(a) The Company may withhold from any payment hereunder such state, federal or local income, employment or other taxes and other legally mandated withholdings as it reasonably deems appropriate. The Company makes no representation about the tax treatment or impact of any payment(s) hereunder.
(b) The intent of the parties is that payments and benefits under this Agreement comply with or be exempt from Section 409A, to the extent subject thereto, and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered to be in compliance with or exempt from Section 409A. The payments to Executive pursuant to this Agreement are also intended to be exempt from Section 409A to the maximum extent possible, under either the separation pay exemption pursuant to Treasury regulation §1.409A-1(b)(9)(iii) or as short-term deferrals pursuant to Treasury regulation §1.409A-1(b)(4), and each amount to be paid or benefit to be provided to Executive pursuant to this Agreement, shall be construed as a separate payment for purposes of Section 409A. Notwithstanding anything herein to the contrary, to the extent any payments made or contemplated hereunder constitute nonqualified deferred compensation, within the meaning of Section 409A: (i) if at the time of Executive’s termination of employment with the Company, Executive is a “specified employee” as defined in Section 409A and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Executive) until the date that is six (6) months and one (1) day following Executive’s termination of employment with the Company (or the earliest date as is permitted under Section 409A); (ii) if any other payments of money or other benefits due to
Executive hereunder could cause the application of an accelerated or additional tax under Section 409A, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner determined by the Company that does not cause such an accelerated or additional tax; and (iii) to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, Executive shall not be considered to have terminated employment with the Company for purposes of this Agreement and no payment shall be due to Executive under this Agreement until Executive would be considered to have incurred a “separation from service” from the Company within the meaning of Section 409A. To the extent required to avoid an accelerated or additional tax under Section 409A, amounts reimbursable to Executive under this Agreement shall be paid to Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in-kind benefits provided to Executive) during any one year may not affect amounts reimbursable or provided in any subsequent year and may not be liquidated or exchanged for any other benefit. Neither the Company nor any of its employees or representatives shall have any liability to Executive with respect to Section 409A.

(c) Notwithstanding anything to the contrary in Sections 3.5 or 3.6, in the event that the COBRA Subsidy would subject the Company Group or Executive to any material tax or penalty under the Patient Protection and Affordable Care Act (as amended from time to time, the “ACA”) or Section 105(h) of the Internal Revenue Code of 1986, as amended (“Section 105(h)”), or applicable regulations or guidance issued under the ACA or Section 105(h), Executive and the Company agree to work together in good faith, consistent with the requirements for compliance with or exemption from Section 409A, to restructure such benefit.

5.12 Clawback. Notwithstanding anything in this Agreement to the contrary, Executive acknowledges that the Company Group may be entitled or required by law, the Equity Agreements or, in connection with or following an initial Public Offering, a customary clawback policy adopted by the Company Group (as amended from time to time, the “Clawback Policy”) or the requirements of an exchange on which the shares of an affiliate of the Company are listed for trading, to recoup compensation paid to Executive pursuant to this Agreement or otherwise, and Executive agrees to comply with any such reasonable request or demand for recoupment by the Company.

5.13 Company Policies. Executive shall be subject to Company Group policies as they may exist from time-to-time, including policies with regard to equity ownership by senior executives, the Clawback Policy, policies regarding the hedging or pledging of securities, and policies regarding trading of securities to the extent that such policies have been made available to Executive.

5.14 Return of Property. Upon termination of Executive’s employment with the Company for any reason, Executive shall immediately destroy, delete, or return to the Company, at the Company’s option, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in Executive’s possession or control that contain Confidential Information or otherwise relate to the business of the Company Group, and cooperate with the Company regarding the delivery or destruction of any other Confidential Information of which Executive is or becomes aware, and shall otherwise return to the Company all material property of the Company Group.
5.15 No Conflict; Representations. Executive represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive does not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, (ii) Executive is not a party to or bound by an employment agreement, non-compete agreement, non-solicit agreement, confidentiality or similar agreement or arrangement with any other Person which would interfere with the performance of his duties hereunder; and (iii) Executive has never been the subject of a sexual harassment, sexual misconduct and sex-based discrimination allegation, including at any prior employer. In connection with his employment with the Company Group, Executive will not use, disclose or rely on any confidential, proprietary or trade secret information belonging to a former employer or other third party.

5.16 Indemnification; Liability Insurance. During the Term and thereafter, the Company and Parent agree that they each shall provide Executive with Directors & Officers liability insurance coverage to the same extent that they indemnify and/or provide such insurance coverage to their respective directors and other most senior executive officers. In addition, Executive and the Company shall enter into an indemnification agreement in the form attached hereto as Exhibit C.

5.17 Survival. Except as otherwise expressly provided in this Agreement, all covenants, representations and warranties, express or implied, in addition to the provisions of Sections 4 and 5 of this Agreement, shall survive the termination of this Agreement.

[signatures on next page]  

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

MCAFEE, LLC

By: /s/ Tim Millikin
Name: Tim Millikin
Title: Authorized Signatory

FOUNDATION TECHNOLOGY WORLDWIDE LLC

By: /s/ Tim Millikin
Name: Tim Millikin
Title: Member, Board of Managers

EXECUTIVE

/s/ Peter Leav

Peter Leav
• Member of the Board of Directors at Box Inc.
• Member of the Board of Directors at Proofpoint Inc.
RELEASE OF CLAIMS

FOR AND IN CONSIDERATION OF the severance pay and benefits to be provided to me under the Employment Agreement between me and McAfee Employee Holdings, LLC (the “Company”), Foundation Technology Worldwide LLC (“Parent”) (the “Employment Agreement”), which are conditioned on my signing this Release of Claims and to which I am not otherwise entitled, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, on my own behalf and on behalf of my heirs, executors, administrators, beneficiaries, representatives and assigns, and all others connected with or claiming through me, hereby release and forever discharge the Company, Parent and their current and past parents, subsidiaries and other affiliates and all of their respective past, present and future officers, directors, trustees, shareholders, employees, agents, employee benefit plans, general and limited partners, members, managers, investors, joint venturers, representatives, successors and assigns, and all others connected with any of them, both individually and in their official capacities (collectively, the “Released Parties”), from any and all causes of action, rights and claims of any type or description, known or unknown, which I have had in the past, now have, or might now have, through the date of my signing of this Release of Claims, in any way related to, connected with or arising out of my employment or its termination or the Employment Agreement or pursuant to any federal, state or local law, regulation or other requirement (including without limitation Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or the fair employment practices statute of the state or states in which I was previously employed by the Company or otherwise had a relationship with the Company or any of its subsidiaries or other affiliates, each as amended from time to time) (collectively, the “Released Claims”). This Release of Claims shall not apply to (a) any claim that arises after I sign this Release of Claims, (b) any rights to indemnification that I may have, (c) any claim that may not be waived pursuant to applicable law, (d) my rights to severance pay and benefits under the Employment Agreement as set forth on Schedule I, (e) any rights I may have in respect of any vested equity that remains outstanding in accordance with its terms after my termination of employment under the Equity Agreements or (f) my rights to any vested benefits to which I am entitled under the terms of any of the Company’s employee benefit plans.

In signing this Release, I expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance of such specific waiver of Section 1542, which Section states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

1 Schedule to reflect severance owed at termination.
Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, I expressly acknowledge that this Release is intended to include in its effect, without limitation, all Released Claims which I do not know or suspect to exist in my favor at the time of execution hereof, and that this Release contemplates the extinguishment of such Release Claim or Released Claims.

Notwithstanding the foregoing, nothing in this Release of Claims shall be construed to prohibit me from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency, except that I hereby agree to waive my right to recover monetary damages or other individual relief in any such charge, investigation or proceeding, or any related complaint or lawsuit filed by me or by anyone else on my behalf.

In signing this Release of Claims, I acknowledge my understanding that I may consider the terms of this Release of Claims for up to [twenty-one (21)/forty-five (45)] days from the date I receive it and that I may not sign this Release of Claims until after the date my employment with the Company terminates. I also acknowledge that I am hereby advised by the Company to seek the advice of an attorney prior to signing this Release of Claims; that I have had sufficient time to consider this Release of Claims and to consult with an attorney, if I wished to do so, or to consult with any other person of my choosing before signing; and that I am signing this Release of Claims voluntarily and with a full understanding of its terms.

I further acknowledge that, in signing this Release of Claims, I have not relied on any promises or representations, express or implied, that are not set forth expressly in the Release of Claims. I understand that I may revoke this Release of Claims at any time within seven (7) days of the date of my signing by written notice to the Chairman of the Company’s Board of Directors and that this Release of Claims will take effect only upon the expiration of such seven-day revocation period and only if I have not timely revoked it.

Intending to be legally bound, I have signed this Release of Claims as of the date written below.

Signature: ________________________
Name: __________________________
Date Signed: _____________________

2. To be determined by the Company at the time of separation.
Exhibit B

You are hereby notified that the Employment Agreement to which this Exhibit B is attached does not apply to any invention which qualifies fully for exclusion under the provisions of Section 2870 of the California Labor Code, and that the provisions of Section 4.4 of the Employment Agreement are subject to the provisions of Sections 2870, 2871 and 2872 of the California Labor Code.

The following is the text of California Labor Code Sections 2870, 2871 and 2872:

SECTION 2870

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

1. Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or

2. Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

SECTION 2871

No employer shall require a provision made void and unenforceable by Section 2870 as a condition of employment or continued employment. Nothing in this article shall be construed to forbid or restrict the right of an employer to provide in contracts of employment for disclosure, provided that any such disclosures be received in confidence, of all of the employee’s inventions made solely or jointly with others during the term of his or her employment, a review process by the employer to determine such issues as may arise, and for full title to certain patents and inventions to be in the United States, as required by contracts between the employer and the United States or any of its agencies.

SECTION 2872

If an employment agreement entered into after January 1, 1980 contains a provision requiring the employee to assign or offer to assign any of his or her rights in any invention to his or her employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention which qualifies fully under the provisions of Section 2870. In any suit or action arising thereunder, the burden of proof shall be on the employee claiming the benefits of its provisions.
AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this “Amendment”), is made and entered into as of September 30, 2020, by and among McAfee, LLC (the “Company”), Foundation Technology Worldwide LLC (“Parent”) and McAfee Corp. (“Issuer”) and Peter Leav (“Executive”). This Amendment shall become effective (the “Effective Time”) as of immediately prior to the consummation of the initial public offering (the “IPO”) of Class A common stock of Issuer. If the IPO is not consummated on or before March 31, 2021, this Amendment shall be null and void and of no force or effect. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Employment Agreement.

WHEREAS, the Company, Parent and the Executive entered into that certain Employment Agreement, dated January 20, 2020 (the “Employment Agreement”);

WHEREAS, the Company, Parent, Issuer and Executive desire to amend the Employment Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the adequacy of all of which consideration is hereby acknowledged, the parties hereby agree that the Employment Agreement is hereby amended as follows as of the Effective Time:

1. The Employment Agreement is hereby amended by adding “McAfee Corp.” as a party thereto, and references to “Issuer” in the Employment Agreement shall be construed to refer to such entity (notwithstanding anything in the Employment Agreement to the contrary).

2. The first two sentences of Section 1.2 are hereby deleted in their entirety and replaced with the following:

“Except as otherwise provided in this Agreement, during the Term of this Agreement, Executive shall serve as the Chief Executive Officer of the Company, Parent, and Issuer, and shall report directly to the Board of Directors of Issuer (the “Board”). In addition, for so long as Executive remains the Chief Executive Officer of Issuer, Executive shall be nominated to serve as a member of the Board.”

3. Section 2.5(b) is hereby deleted in its entirety and replaced with the following:

“Notwithstanding anything to the contrary herein or in the Equity Agreements, in connection with the IPO (and the related restructuring transactions), as of and following the Effective Time, the RSUs, the Management Incentive Units and Executive’s Class A Units have been adjusted as contemplated by that certain Equity Adjustment Agreement, by and among Executive, Parent and the Issuer dated on or about September 30, 2020 (the “EAA”) and such equity and equity-based awards (in each case, as so adjusted) shall be subject to the terms of the EAA (and the documents referenced therein, including the Equity Agreements (but subject to the adjustments contemplated by the EAA and any amendments thereto undertaken in connection with the IPO)) as of and following the Effective Time.”
4. Section 2.5(c) is hereby deleted in its entirety.

5. Clauses (i) through (iv) of Section 2.5(d) are hereby deleted in their entirety.

6. Clause (v) of Section 2.5(d) is hereby deleted in its entirety and replaced with the following:
   The call option set forth in Section 4.03 of the LLC Agreement shall lapse upon the Effective Time.

7. Section 5.8 is hereby deleted in its entirety and replaced with the following:
   “This Agreement (along with all amendments thereto, and all documents referenced herein and therein) contains all of the terms agreed upon by the Company, Parent, Issuer and Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written, including, without limitation, the CEO Employment Term Sheet dated as of January 7, 2020; provided that this Agreement will not supersede all your equity award agreements in effect prior to the Effective Time.”

8. The last sentence of Section 5.11(b) shall be amended and restated in its entirety as follows:
   “No member of the Company Group, nor any of its employees or representatives shall have any liability to Executive with respect to Section 409A.”

9. Annex I is hereby amended to remove the reference to Proofpoint Inc.

10. Except as amended by this Amendment, the Employment Agreement shall remain in full force and effect in accordance with its terms.

11. This Amendment may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or electronic means (including “pdf”, DocuSign or by similar means), and each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

12. This Amendment and the rights and obligations of the parties hereto shall be construed and determined in accordance with the law of Delaware, without regard to any conflict of law provisions thereof.

   [Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the date and year first written above.

MCAFEE CORP.

By:  /s/ Chatelle Lynch  
Name: Chatelle Lynch  
Title: SVP

FOUNDATION TECHNOLOGY WORLDWIDE LLC

By:  /s/ Chatelle Lynch  
Name: Chatelle Lynch  
Title: SVP

MCAFEE, LLC

By:  /s/ Chatelle Lynch  
Name: Chatelle Lynch  
Title: SVP

EXECUTIVE

/s/ Peter Leav  
Peter Leav

[Amendment to Employment Agreement]
This Employment Agreement (this “Agreement”), is made and entered into as of August 7, 2020, by and among McAfee, LLC (the “Company”), Foundation Technology Worldwide LLC (“Parent”) and Venkat Bhamidipati (“Executive”). This Agreement shall become effective as of the Effective Date (as defined below).

WHEREAS, the Company desires to employ Executive on the terms and conditions contained herein; and

WHEREAS, Executive desires to be employed by and render services to the Company upon and subject to the terms, conditions and other provisions set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the adequacy of all of which consideration is hereby acknowledged, the parties hereby agree as follows:

1. EMPLOYMENT

1.1 Agreement and Term. The Company hereby agrees to employ Executive, and Executive hereby accepts such employment and agrees to render such services to the Company, on the terms and conditions set forth in this Agreement. Unless terminated earlier as set forth in Section 3 herein, Executive’s employment and the term under this Agreement shall commence on September 2, 2020 (the “Effective Date”) and shall continue until terminated in accordance with Section 3 below (the “Term”).

1.2 Position and Duties. Except as otherwise provided in this Agreement, during the Term of this Agreement, Executive shall serve as Executive Vice President & Chief Financial Officer of the Company, and shall report directly to the Chief Executive Officer. Executive’s principal work location shall be at the Company’s offices in Santa Clara, California or such other location as Executive and the Company shall mutually agree, (hereinafter the “Principal Place of Business”), provided that Executive shall not be required to relocate his principal residence to the area of the Principal Place of Business within the first twelve (12) months following the Effective Date but upon his relocation, the Company will provide him with direct moving expenses for personal effects up to $50,000 in the aggregate, and until such time as he may relocate his principal residence, the Company will reimburse him for his reasonable commuting and other reasonable related costs from and back to his current principal residence, provided further that Executive may be required to travel as reasonably necessary in order to perform his duties and responsibilities hereunder. Executive shall carry out his duties and responsibilities at all times in compliance with the written policies and procedures of the Company and its affiliates (Parent, the Company and their respective affiliates from time to time, collectively, and each individually a member of, the “Company”).
that have been made available to Executive, as in effect from time to time. Executive shall also perform such other duties as reasonably requested by the Board of Managers of Parent (the “Board”), including service as an officer or director of any other member of the Company Group without additional compensation. During the Term of this Agreement, Executive shall use his best business efforts to serve the Company Group faithfully, diligently and competently and to the best of his ability, and to devote his full time business hours, energy, ability, attention and skill to the business of the Company Group; provided, however, that the foregoing is not intended to preclude Executive from noncompetitive activities that are conducted outside normal business hours and are permitted under Section 1.3 hereof.

1.3 Outside Activities. During the Term of this Agreement, (i) with the prior written consent of the Board, Executive may serve on the board of directors of a for-profit entity and as a director or advisor of other not-for-profit educational, welfare, social, religious and civic organizations, and (ii) Executive may perform charitable and other activities, and manage his personal investments; provided, however, that in the case of either (i) or (ii) such activities do not materially interfere with the performance of his duties hereunder and otherwise to the Company Group and are not in conflict or competitive with, or adverse to, the interests of the Company Group. Executive shall not, however, under any circumstances, provide services or advice in any capacity whatsoever for or on behalf of any entity that competes with or is competitive with the Company Group.

2. COMPENSATION AND BENEFITS; EXPENSES

2.1 Salary. The Company shall compensate and pay Executive for his services a Base Salary at a rate equivalent to $650,000 per year, less payroll deductions and all required tax withholdings, which salary shall be payable in accordance with the Company’s customary payroll practices applicable to its executives. The Base Salary shall be subject to annual review and possible increase (but not decrease) by the Board or its Compensation Committee (the “Committee”) based on individual and Company performance. The term “Base Salary” shall refer to Executive’s annual base salary as may be in effect from time to time.

2.2 Bonus. With respect to each fiscal year of the Company ending during the Term and subject to the achievement of any applicable performance goals, based on corporate, business unit and/or individual performance, to be established by the Board or the Committee, Executive shall be entitled to participate in the Company’s annual incentive plan, as such, and on such terms and conditions as, may be established by the Board or the Committee from time to time, under which Executive shall be eligible to earn an annual bonus (the “Annual Bonus”) with a target amount equal to 100% of the Base Salary (the “Target Bonus”), subject to Executive being employed with the Company on the date that the Annual Bonus is paid (except as otherwise provided in Section 3). For the avoidance of doubt, Executive’s Annual Bonus for the Company’s 2020 fiscal year will be pro-rated based on the number of days he is employed by the Company. The Company shall pay earned Annual Bonuses to Executive no later than 21⁄2 months following the end of each fiscal year. The Target Bonus shall be subject to review and possible increase (but not decrease) by the Board or the Committee based on individual and Company performance at the Board’s or the Committee’s sole discretion.

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2.3 Employee Benefits. During the Term of this Agreement, to the extent eligible under the applicable plans or programs and applicable law, Executive shall be entitled to participate in the employee benefits plans and programs made available to executive level employees of the Company generally, such as health, medical, dental, death and disability and other insurance coverage and group retirement plans. The terms and conditions of Executive’s participation in any employee benefit plan or program shall be subject to the terms and conditions of such plan or program, as may be modified by the Company from time to time. Nothing in this Agreement shall preclude the Company from amending or terminating any employee benefit plan or program, subject to the terms of the applicable plan or program.

2.4 Vacations. Executive shall be entitled to vacation in accordance with the Company Group’s vacation policies as in effect from time to time. Vacation may be taken at such times and intervals as Executive shall determine, subject to the business needs of the Company Group.

2.5 Long-Term Incentives.

(a) On or about August 13, 2020, Parent will grant Executive 200,000 restricted share units payable in Class A Units of Parent (such restricted share units, the “RSUs”, and such Class A Units the “Class A Units”) and 200,000 Management Incentive Units of Parent (the “Management Incentive Units”), in each case, pursuant to the Foundation Technology Worldwide LLC 2017 Management Incentive Plan (the “Plan”). The specific terms and conditions of the RSUs and Management Incentive Units shall be set forth in the Plan, the grant agreement governing such awards and Parent’s Amended and Restated Limited Liability Company Agreement dated as of April 3, 2017 (as amended from time to time, the “LLC Agreement”). As a condition to receiving the Class A Units, RSUs and Management Incentive Units, Executive shall be required to become party to the LLC Agreement (together with the Plan and the applicable grant agreements, the “Equity Agreements”, the form of which Equity Agreements are appended hereto as Exhibit A).

(b) In connection with any initial public offering of the shares of stock of any member of the Company Group, including any present or future affiliate thereof (together with any related reorganization transaction(s), an “IPO” and, such member of the Company Group or affiliate, “Pubco”), the Company Group or such affiliate may cause the RSUs, the Class A Units and/or the Management Incentive Units to, at the election of the Board or the Committee, be exchanged for shares of Pubco stock and/or, in the case of RSUs and Management Incentive Units, at the election of the Board or the Committee, be exchanged for shares of Pubco stock and/or, in the case of RSUs and Management Incentive Units, awards based on or convertible into Pubco stock, in any case, having the same value and subject to the same vesting and other terms and conditions, in each case, as of immediately following the exchange, as such RSUs, Class A Units and/or Management Incentive Unit for which they were exchanged were subject as of immediately prior to such exchange. Further, in connection with an IPO, shares of Pubco stock received or to be received by Executive (or his permitted transferees) shall be subject to a lock-up period described in a lock-up agreement in the form agreed upon with the underwriters in connection with the IPO and, following the expiration of such lock-up period, Executive shall only be entitled to transfer such shares of Pubco stock.
stock (to the extent vested) if and when shares of Pubco stock held by investment funds affiliated with TPG are sold, with the number of shares of Pubco stock eligible to be sold by Executive (and his permitted transferees) upon each sale by such investment funds determined on a pro rata basis with the number of shares Pubco stock sold by such investment funds at such time (determined on a cumulative basis and taking into account any shares prior sales of Pubco stock held by investment funds affiliated with TPG). Subject to the other restrictions set forth herein or in the Equity Agreements, following an IPO, all sales by Executive will be pursuant to a pre-approved trading plan pursuant to Rule 10b-5-1 under the Securities and Exchange Act of 1934, as amended, or when Executive is not otherwise in possession of material nonpublic information. In furtherance of the foregoing, Executive agrees to take such actions and execute such documents as are requested by the Board or the Committee to effectuate such exchange and/or transfer restrictions.

2.6 Business Expenses. The Company shall reimburse Executive or otherwise provide for or pay for reasonable out-of-pocket expenses incurred by Executive in furtherance of or in connection with the business of the Company Group, including, but not limited to, travel and entertainment expenses commensurate with his duties hereunder (including attendance at industry conferences), subject to the Company Group’s policies as in effect from time to time, including without limitation such reasonable documentation and other limitations as may be established or required by the Company Group. In addition, not later than ten (10) business days of the Effective Date, the Company shall pay or reimburse Executive for any and all reasonable attorneys’ fees and related costs paid in connection with his negotiation and execution of this Agreement and the Equity Agreements, up to a maximum, in the aggregate, of $17,500.

3. TERMINATION

3.1 Notice of Termination. With the exception of termination of Executive’s employment due to Executive’s death, any purported termination of Executive’s employment by the Company for any reason, including without limitation for Cause or Disability, or by Executive for any reason, shall be communicated by a written “Notice of Termination” to the other party. “Notice of Termination” means a dated notice that (i) indicates the specific termination provision in this Agreement relied upon and (ii) specifies a Termination Date, which may be the date of the notice except as described below. “Termination Date” means (A) in the case of termination of employment due to death, the date of Executive’s death, or (B) if Executive’s employment is terminated for any other reason, the date on which a Notice of Termination is given or as specified in such notice, which, in the case of a resignation by Executive other than for Good Reason, shall be no less than thirty (30) days following the date on which the Notice of Termination is given. For purposes of clarification, the Term shall end on the Termination Date.

3.2 Termination Due to Death or Disability. If Executive’s employment and the Term is terminated by reason of Executive’s death or Disability, Executive or his estate shall be entitled to receive: (a) Executive’s earned but unpaid Base Salary through the Termination Date; (b) an amount for reimbursement, paid within thirty (30) days following submission by Executive (or if applicable, Executive’s estate) to the Company of appropriate supporting documentation for any unreimbursed business expenses properly incurred prior to
the Termination Date by Executive pursuant to Section 2.8 and in accordance with Company Group policies; (c) any earned and unused vacation, paid when required by applicable law and no later than thirty (30) days following the Termination Date; and (d) such employee benefits, if any, to which Executive (or, if applicable, Executive’s estate) or his dependents may be entitled under the employee benefit plans or programs of the Company Group, paid in accordance with the terms of the applicable plans or programs (the amounts described in clauses (a) through (d) hereof being referred to as the “Accrued Rights”). For purposes hereof, “Disability” means Executive is unable to perform the essential functions of his position with substantially the same level of quality as immediately prior to such incapacity (notwithstanding the provision of any reasonable accommodation) by reason of any medically determinable physical or mental impairment which has lasted or can reasonably be expected to last for a period of one hundred twenty (120) or more consecutive days or one hundred and twenty (120) days during any consecutive six (6) month period, as determined by a physician to be selected by mutual agreement between Executive and the Company.

3.3 Termination by Executive for Other Than Good Reason. In the event Executive terminates his employment and the Term for other than Good Reason, Executive shall be entitled to receive the Accrued Rights.

3.4 Termination by the Company for Cause. In the event the Company terminates his employment and the Term for Cause (or Executive’s employment terminates under circumstances where Cause exists), Executive shall be entitled to receive the Accrued Rights.

3.5 Termination by the Company without Cause or by Executive for Good Reason. If Executive’s employment and the Term is terminated by the Company without Cause, or by Executive for Good Reason, Executive shall be entitled, in addition to the Accrued Rights and subject to Executive’s continued compliance with this Agreement and the Equity Agreements, and Executive’s execution, delivery and non-revocation of an effective release of all claims against the Company Group in substantially the form attached hereto as Exhibit B (the “Release”) within the sixty (60) day period following the date of the termination of Executive’s employment (the “Release Period”) to receive:

(a) equal or substantially equal payments over the twelve (12)-month period following the date of termination, in an aggregate amount equal to one (1) times the sum of (i) Executive’s then-current Base Salary plus (ii) the Target Bonus, with such amounts to be paid in accordance with regular payroll practices, less applicable withholdings and taxes, beginning on the first regular payroll date following the date on which the Release becomes fully effective (and with the first payment to include all payments that would otherwise have been made prior to such date) (the “Severance Payments”); and

(b) provided that Executive timely elects COBRA (as defined below) coverage, monthly COBRA enrollment premiums (the “COBRA Coverage”, and together with the Severance Payments, the “Severance Benefits”) to participate in the Company’s medical, dental and vision plans, in an amount equal to the employer-paid portion for active employees who elect the same type of coverage (e.g., individual only, individual plus family, etc.) through the earlier of the end of the twelve (12)-month period immediately following the Termination Date and the time at which Executive becomes eligible for group health coverage from another employer, with such premiums payable directly to the Company’s COBRA provider on a monthly basis. Executive must notify the Company within seven (7) days of learning that he will become eligible to for group health coverage from another employer.
(c) In addition to the Severance Benefits, solely if Executive’s employment and the Term is terminated by the Company without Cause, any earned but unpaid Annual Bonus related to the (i) the fiscal year of Executive’s termination solely if Executive was employed through the end of the third quarter of such fiscal year, or (ii) the completed fiscal year preceding the fiscal year in which Executive’s termination of employment occurs (the “Bonus Severance”), in each case, with payment of the Bonus Severance to be based on actual performance for the applicable fiscal year. The Bonus Severance will be payable in accordance with regular payroll practices, less applicable withholdings and taxes on the later of (x) the first regular payroll date following the date on which the Release becomes fully effective and (y) the date annual bonuses with respect to such fiscal year are payable to other executives of the Company, but in no event later than two and one-half months following the end of the year of termination.

To the extent any payments made or contemplated hereunder constitute nonqualified deferred compensation, within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”) and if the Release Period spans two (2) calendar years, then such payments that would otherwise have been made prior to the end of the Release Period will be made, after the release becomes irrevocable, in the form of a lump sum on the first payroll date that occurs in the second calendar year.

(i) “Cause” means, as determined by the Board in its reasonable good faith judgment, Executive’s: (A) conviction of an act of material fraud or dishonesty; (B) intentional refusal or willful failure to carry out the lawful and reasonable instructions of the Board; (C) commission of a felony or a misdemeanor crime involving moral turpitude (where moral turpitude means so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community); (D) gross misconduct or gross negligence in connection with the performance of his duties; (E) material breach of any provision of this Agreement or any other employment or restrictive covenant agreement with the Company or material violation of any material written policy or written code of conduct of the Company Group that has been made available to Executive; (F) breach of fiduciary duty to the Company Group; (G) willful failure to cooperate with the Company Group in any investigation or formal proceeding or being found liable in a Securities and Exchange Commission (the “SEC”) enforcement action or otherwise being disqualified from Executive’s job; or (H) breach of duty of loyalty to the Company Group.

(ii) “Good Reason” shall mean, without Executive’s consent: (A) a material breach by the Company Group of this Agreement; (B) a material diminution of Executive’s duties, responsibilities or status; (C) a reduction by the Company Group in Executive’s Base Salary or Target Bonus; or (D) the relocation of the Principal Place of Business by more than fifty (50) miles. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition Executive believes constitutes Good Reason Executive provides the Company with a written notice (a “Good Reason Notice”) that specifically explains the basis for Executive’s belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of the Company’s receipt of the Good Reason Notice, the Company fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after the Company’s receipt of the Good Reason Notice, and (z) Executive actually terminates his employment (and, if applicable, other service relationship) within sixty (60) days after the Company’s receipt of the Good Reason Notice.
3.6 **No Other Benefits Upon Termination.** Except as provided in the applicable sub-section of this Section 3 and except for any vested benefits under any tax qualified pension plans of the Company, and continuation of health insurance benefits on the terms and to the extent required by Section 4980B of the Code and Section 601 of the Employee Retirement Income Security Act of 1974, as amended (which provisions are commonly known as “**COBRA**”), the Company shall have no additional obligations upon the termination of Executive’s employment with the Company.

3.7 **No Mitigation.** For the avoidance of doubt, Executive shall have no duty to seek employment following termination of employment or otherwise to mitigate damages. The amounts or benefits payable or available to Executive under this Agreement shall not be reduced by any amount Executive may earn or receive from employment with another employer or from any other source.

3.8 **Cooperation with Company after Termination of Employment.** Following termination of Executive’s employment for any reason, Executive shall reasonably cooperate with the Company Group in all matters relating to the winding up of his pending work on behalf of the Company Group including, but not limited to, any litigation in which the Company Group is involved and the orderly transfer of any such pending work to other employees of the Company Group as may be designated by the Company. Executive’s obligations hereunder shall be subject to his reasonable availability, and, without limiting any of the restrictions in Section 4 below, the parties shall cooperate to avoid having Executive’s commitment under this Section 3.8 materially interfere with other personal and business commitments or obligations of Executive. The Company Group shall reimburse Executive for any reasonable out-of-pocket expenses he incurs in performing any work on behalf of the Company Group following the Termination Date.

4. **NON-SOLICITATION & NON-COMPETITION**

4.1 **Non-Compete; Non-Solicit of Customers.** Executive agrees that he shall not, directly or indirectly, during the Term and for the twelve (12)-month period following the Termination Date, (i) become an employee, director, or independent contractor, stockholder or other owner (other than as (a) a holder of less than 1% of any class of securities of any company (whether public or private) or (b) a holder of a passive equity interest in a private debt or equity investment fund in which Executive does not have the ability to control or exercise any managerial influence over such fund) of, or a consultant to, or perform any services for, any Person that engages in security solutions related to computers, mobile devices and networks or any other business the Company Group is engaged in, or is actively planning to engage in, as of the Termination Date (each, a “**Competing Business**”), or (ii) solicit or engage or attempt to solicit or engage, as applicable, any current or prospective customer that has been actively pursued by the Company within the twelve (12) month period preceding the Termination Date (provided that Executive has or should have knowledge of such
pursuit or such prospective customer is or could reasonably be expected to bring material benefit to the Company or its affiliates) or supplier of the Company Group or to terminate or alter in a manner adverse to the Company Group such current or prospective customer’s or supplier’s relationship with the Company Group. For purposes of this Agreement, “Person” shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

4.2 Non-Solicit of Employees/Contractors. Executive agrees that he shall not, directly or indirectly, during the Term and for the twelve (12)-month period following the Termination Date hire, solicit or attempt to solicit, as applicable, any Company Group employee, any natural person serving as an independent contractor (or any entity independent contractor controlled by a natural person providing services to the Company Group) (an “Independent Contractor”) or individual who was a Company Group employee or Independent Contractor within the six (6) month period immediately prior thereto to terminate or otherwise alter his, her or its employment or other service relationship with the Company Group.

4.3 Confidential Information. Executive acknowledges and agrees that all information regarding the Company Group or the activity of the Company Group that is not generally known to persons not employed or retained (as employees or as independent contractors or agents) by the Company Group, including without limitation information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company Group (the “Confidential Information”) is established at great expense and protected as confidential information and provides the Company Group with a substantial competitive advantage in conducting its business. Executive further acknowledges and agrees that by virtue of his employment with the Company, he has had access to and will have access to, and has been entrusted with and will be entrusted with Confidential Information, and that the Company Group could suffer great loss and injury if Executive would disclose this information or use it in a manner not specifically authorized by the Company. Therefore, Executive agrees that during the Term and at all times thereafter, he will not, directly or indirectly, either individually or as an employee, agent, partner, shareholder, owner trustee, beneficiary, co-venturer distributor, consultant or in any other capacity, use or disclose or cause to be used or disclosed any Confidential Information, unless and to the extent that any such information becomes generally known to and available for use by the public other than as a result of Executive’s acts or omissions. Executive shall deliver to the Company at the termination of his employment and the Term, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information, or the business of the Company which he may then possess or have under his control. In addition, Executive agrees that, notwithstanding the foregoing, to the extent Executive is compelled to disclose Confidential Information by lawful service of process, subpoena, court order, or otherwise compelled to do by law, Executive shall, to the extent legally
permitted, provide the Company with a copy of the document(s) seeking disclosures of such information promptly upon receipt of such document(s) and prior to Executive’s disclosure of any such information, so that the Company may take such action as it deems to be necessary or appropriate in relation to such subpoena or request and Executive may not disclose any such information until the Company has had the opportunity to take such action. Nothing in this Agreement limits, restricts or in any other way affects Executive’s communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires Executive to provide notice the Company with notice of the same. Executive cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Executive may be held liable if Executive unlawfully accesses trade secrets by unauthorized means.

4.4 Intellectual Property

(a) If Executive creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including, without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content or audiovisual materials) ("Works"), either alone or with third parties, at any time during Executive’s employment with the Company Group and within the scope of such employment and/or with the use of any the Company Group resources ("Company Works"), Executive shall promptly and fully disclose the same to the Company and hereby irrevocably assigns, transfers and conveys, and agrees to assign, transfer and convey, to the maximum extent permitted by applicable law, all rights and intellectual property rights therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) to the Company (or any member of the Company Group so designated by the Company) to the extent ownership of any such rights does not vest originally in the Company Group. All copyrightable works that Executive creates during employment with the Company Group will be considered “work made for hire” and will, upon creation, be owned exclusively by the Company (or an affiliate designated by the Company).

(b) Executive shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company Group’s expense (but without further remuneration) to assist the Company Group in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company Group’s rights in the Company Works. If the Company is unable for any other reason to secure Executive’s signature on any document for this purpose, then Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive’s agent and attorney in fact, to act for and in Executive’s behalf and stead to execute any documents and to do all other lawfully permitted acts in connection with the foregoing.

(c) Executive shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with, the Company Group, any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. Executive shall comply with all relevant written policies and guidelines of the Company
Group that have been made available to Executive, including, without limitation, policies and guidelines regarding the protection of confidential information and intellectual property and potential conflicts of interest. Executive acknowledges that the Company Group may amend any such policies and guidelines from time to time, and that Executive remains at all times bound by their most current version.

(d) Notwithstanding the foregoing, this Section 4.4 is subject to the provisions of California Labor Code Sections 2870, 2871 and 2872. In accordance with Section 2870 of the California Labor Code, Executive’s obligation to assign Executive’s right, title and interest throughout the world in and to all Company Works does not apply to any Works that Executive developed entirely on his own time without using the Company’s equipment, supplies, facilities, or Confidential Information except for those Company Works that either (A) relate to the business of the Company Group at the time of conception or reduction to practice of the Work, or actual or demonstrably anticipated research or development of the Company Group or (B) result from any work performed by Executive for the Company Group. A copy of California Labor Code Sections 2870, 2871 and 2872 is attached to this Agreement as Exhibit C. Executive shall disclose all Works to the Company, even if Executive does not believe that Executive is required under this Agreement, or pursuant to California Labor Code Section 2870, to assign his interest in such Works to the Company.

4.5 Reasonable Limitation and Severability; Injunctive Relief. The parties agree that the above restrictions are (i) reasonable given Executive’s role with the Company, and are necessary to protect the interests of the Company Group and (ii) completely severable and independent agreements supported by good and valuable consideration and, as such, shall survive the termination of this Agreement for any reason whatsoever. The parties further agree that any invalidity or unenforceability of any one or more of such restrictions on competition shall not render invalid or unenforceable any remaining restrictions on competition. Additionally, should a court of competent jurisdiction determine that the scope of any provision of this Section 4 is too broad to be enforced as written, the parties hereby authorize the court to reform the provision to such narrower scope as it determines to be reasonable and enforceable and the parties intend that the affected provision be enforced as so amended. Executive acknowledges and agrees that the Company’s remedies at law for a breach or threatened breach could be inadequate and the Company could suffer significant harm and irreparable damages as a result of a breach or threatened breach. In recognition of this fact, Executive agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law or under the Equity Agreements or any other agreement between Executive and any member of the Company Group, the Company, without posting any bond, shall be entitled to cease making any payments or providing any benefit otherwise required by this Agreement and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available. The remedies under this Agreement are without prejudice to the Company’s right to seek any other remedy to which it may be entitled at law or in equity.
5. GENERAL PROVISIONS

5.1 Assignment; Successors. This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by Executive. Notwithstanding anything herein to the contrary, the Company may at any time assign all or any of its obligations under this Agreement to any of its affiliates, including Pubco with or without notice or consent. The Company shall require any such assignee or any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume this Agreement in the same manner and to the same extent that the Company would have been required to perform it if no such succession had taken place. As used in the Agreement, “the Company” shall mean both the Company as defined above and any such successor that assumes this Agreement, by operation of law or otherwise, and the terms “Board” and “Committee” shall refer to the Board of Managers and Compensation Committee of Parent, to the board of directors or managers and/or compensation or similar committee of any successor or assign, including Pubco.

5.2 Notice. For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below (or such other address as is provided in writing to the other party):

To the Company or Parent
General Counsel
Corporate Headquarters
2821 Mission College Blvd.
Santa Clara, CA 95054

With copies (not constituting notice to):
TPG Global, LLC
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
Attention: Adam Fliss
AFliss@tpg.com

To Executive:
At his most recent address or email address shown in the Company’s records

5.3 Amendment and Waiver. No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing, with such written document explicitly referencing this Agreement, and signed by each of the parties hereto.

5.4 Non-Waiver of Breach. No failure by either party to declare a default due to any breach of any obligation under this Agreement by the other, nor failure by either party to act quickly with regard thereto, shall be considered to be a waiver of any such obligation, or of any future breach.
5.5 **Severability.** In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

5.6 **Governing Law.** To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined in accordance with the law of Delaware (or, if Executive is Washington-based as of a relevant time, in Washington), without regard to any conflict of law provisions thereof. The parties irrevocably consent to arbitrate all disputes related in any manner to this Agreement, Executive’s employment (including the terms and conditions thereof) and all matters in accordance with terms of the Arbitration Agreement attached as Exhibit D; provided that any such arbitration shall in all events take place in the State of Delaware (or, if Executive is Washington-based as of a relevant time, in Washington); and provided further that in any conflict between this Agreement and the Arbitration Agreement, this Agreement shall control. By signing this Agreement, Executive acknowledges and agrees that he has been individually represented by legal counsel in negotiating the terms of this Agreement and the Equity Agreements (including without limitation as to all restrictive covenants contained herein, the remedies for breaches of such covenants, and the governing law and forum that will apply in the event of any disputes related to such restrictive covenants).

5.7 **Entire Agreement.** This Agreement contains all of the terms agreed upon by the Company and Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written, including, without limitation, any prior offer letter.

5.8 **Headings.** Numbers and titles to Sections hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.

5.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together, shall be and constitute one and the same instrument.

5.10 **Taxes.**

(a) The Company may withhold from any payment hereunder such state, federal or local income, employment or other taxes and other legally mandated withholdings as it reasonably deems appropriate. The Company makes no representation about the tax treatment or impact of any payment(s) hereunder.

(b) The intent of the parties is that payments and benefits under this Agreement comply with or be exempt from Section 409A, to the extent subject thereto, and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered to be in compliance with or exempt from Section 409A. The payments to Executive pursuant to this Agreement are also intended to be exempt from Section 409A to the maximum extent possible, under either the separation pay exemption pursuant to Treasury regulation §1.409A-1(b)(9)(iii) or as short-term deferrals pursuant to Treasury regulation §1.409A-1(b)(4), and each amount to be paid or benefit to be provided to Executive pursuant to this Agreement, shall be construed as a separate payment for purposes of Section 409A. Notwithstanding anything herein to the contrary, to the extent any payments made or contemplated hereunder
constitute nonqualified deferred compensation, within the meaning of Section 409A: (i) if at the time of Executive’s termination of employment with the Company, Executive is a “specified employee” as defined in Section 409A and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Executive) until the date that is six (6) months and one (1) day following Executive’s termination of employment with the Company (or the earliest date as is permitted under Section 409A); (ii) if any other payments of money or other benefits due to Executive hereunder could cause the application of an accelerated or additional tax under Section 409A, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner determined by the Company that does not cause such an accelerated or additional tax; and (iii) to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, Executive shall not be considered to have terminated employment with the Company for purposes of this Agreement and no payment shall be due to Executive under this Agreement until Executive would be considered to have incurred a “separation from service” from the Company within the meaning of Section 409A. To the extent required to avoid an accelerated or additional tax under Section 409A, amounts reimbursable to Executive under this Agreement shall be paid to Executive on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in-kind benefits provided to Executive) during any one year may not affect amounts reimbursable or provided in any subsequent year and may not be liquidated or exchanged for any other benefit. Neither the Company nor any of its employees or representatives shall have any liability to Executive with respect to Section 409A.

(c) Notwithstanding anything to the contrary in Section 3.5, in the event that the COBRA Subsidy would subject the Company Group or Executive to any tax or penalty under the Patient Protection and Affordable Care Act (as amended from time to time, the “ACA”) or Section 105(h) of the Internal Revenue Code of 1986, as amended (“Section 105(h)”), or applicable regulations or guidance issued under the ACA or Section 105(h), Executive and the Company agree to work together in good faith, consistent with the requirements for compliance with or exemption from Section 409A, to restructure such benefit.

5.11 Clawback. Notwithstanding anything in this Agreement to the contrary, Executive acknowledges that the Company Group may be entitled or required by law, the Equity Agreements or the Company Group’s clawback policy (as amended from time to time, the “Clawback Policy”) or the requirements of an exchange on which the shares of an affiliate of the Company are listed for trading, to recoup compensation paid to Executive pursuant to this Agreement or otherwise, and Executive agrees to comply with any such request or demand for recoupment by the Company. Executive acknowledges that the Clawback Policy may be modified from time to time in the sole discretion of the Company and without the consent of Executive.
5.12 Company Policies. Executive shall be subject to Company Group policies as they may exist from time-to-time, including policies with regard to equity ownership by senior executives, the Clawback Policy, policies regarding the hedging or pledging of securities, and policies regarding trading of securities to the extent that such policies have been made available to Executive.

5.13 Return of Property. Upon termination of Executive’s employment with the Company for any reason, Executive shall immediately destroy, delete, or return to the Company, at the Company’s option, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in Executive’s possession or control that contain Confidential Information or otherwise relate to the business of the Company Group, and cooperate with the Company regarding the delivery or destruction of any other Confidential Information of which Executive is or becomes aware, and shall otherwise return to the Company all property of the Company Group.

5.14 No Conflict; Representations. Executive represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive does not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, (ii) Executive is not a party to or bound by an employment agreement, non-compete agreement, non-solicit agreement, confidentiality or similar agreement or arrangement with any other Person which would interfere with the performance of his duties hereunder; and (iii) Executive has never been the subject of a sexual harassment, sexual misconduct and sex-based discrimination allegation, including at any prior employer. In connection with his employment with the Company Group, Executive will not use, disclose or rely on any confidential, proprietary or trade secret information belonging to a former employer or other third party.

5.15 Additional Requirements. The obligations of the Company under this Agreement and Executive’s employment are conditioned upon (i) Executive’s satisfactory completion of a background investigation; (ii) if Executive’s employment is subject to laws relating to export controls, the Company’s timely acquisition of an export license on his behalf; (iii) if Executive is a foreign national requiring sponsorship to obtain the indefinite right to work in the United States, Executive’s satisfaction of the Company’s sponsorship guidelines by filling a position for which the Company experiences a shortage of qualified and available United States workers and meeting the requirements for obtaining a work visa and permanent residents; (iv) Executive’s provision of documentation of his legal right to work in the United States not later than the second day following the Effective Date; and (v) Executive’s executing and returning to the Company prior to the Effective Date the Proprietary Information and Inventions Assignment Agreement and the Arbitration Agreement attached as Exhibit D; provided that in the event of a conflict between such agreement and this Agreement (including Section 5.6 hereof), this Agreement shall control.

5.16 Indemnification; Liability Insurance. During the Term and thereafter, the Company and Parent agree that they shall provide Executive with Directors & Officers liability insurance coverage to the same extent that they indemnify and/or provide such insurance coverage to their directors and other most senior executive officers. In addition, Executive and the Company shall enter into an indemnification agreement in the form attached hereto as Exhibit E.
5.17 Survival. Except as otherwise expressly provided in this Agreement, all covenants, representations and warranties, express or implied, in addition to the provisions of Sections 4 and 5 of this Agreement, shall survive the termination of this Agreement.

[signatures on next page]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date and year first written above.

EXECUTIVE

/s/ Venkat Bhamidipati
Venkat Bhamidipati
Date: August 7, 2020

MCAFEE, LLC

By: /s/ Chatelle Lynch

Name: Chatelle Lynch
Title: SVP & Chief People Officer

FOUNDATION TECHNOLOGY WORLDWIDE LLC

By: /s/ Chatelle Lynch

Name: Chatelle Lynch
Title: Authorized Signatory
AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement (this “Amendment”), is made and entered into as of September 30, 2020, by and among McAfee, LLC (the "Company"), Foundation Technology Worldwide LLC (“Parent”) and McAfee Corp. (“Issuer”) and Venkat Bhamidipati (“Executive”). This Amendment shall become effective (the “Effective Time”) as of immediately prior to the consummation of the initial public offering (the “IPO”) of Class A common stock of Issuer. If the IPO is not consummated on or before March 31, 2021, this Amendment shall be null and void and of no force or effect. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Employment Agreement.

WHEREAS, the Company, Parent and the Executive entered into that certain Employment Agreement, dated August 7, 2020 (the “Employment Agreement”);

WHEREAS, the Company, Parent, Issuer and Executive desire to amend the Employment Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the adequacy of all of which consideration is hereby acknowledged, the parties hereby agree that the Employment Agreement is hereby amended as follows as of the Effective Time:

1. The Employment Agreement is hereby amended by adding “McAfee Corp.” as a party thereto, and references to “Issuer” in the Employment Agreement shall be construed to refer to such entity.

2. The third and fourth sentences of Section 1.2 are hereby deleted in their entirety and replaced with the following:

“Executive shall carry out his duties and responsibilities at all times in compliance with the written policies and procedures of the Company, Parent, Issuer and their respective affiliates (Parent, Issuer the Company and their respective affiliates from time to time, collectively, and each individually a member of, the “Company Group”) that have been made available to Executive, as in effect from time to time. Executive shall also perform such other duties as reasonably requested by the Board of Directors of Issuer (the “Board”), including service as an officer or director of any other member of the Company Group without additional compensation.”

3. Section 2.5(b) is hereby deleted in its entirety and replaced with the following:

“Notwithstanding anything to the contrary herein or in the Equity Agreements, in connection with the IPO (and the related restructuring transactions), as of and following the Effective Time, the RSUs, any the Class A Units received in respect of RSUs, and the Management Incentive Units have been adjusted as contemplated by that certain Equity Adjustment Agreement, by and among Executive, Parent and the Issuer dated on or about September 30, 2020 (the “EAA”) and such equity and equity-based awards (in each case, as so adjusted) shall be subject to the terms of the EAA (and the documents referenced therein, including the Equity Agreements (but subject to the adjustments contemplated by the EAA and any amendments thereto undertaken in connection with the IPO)) as of and following the Effective Time.”
4. Section 5.7 is hereby deleted in its entirety and replaced with the following:

“This Agreement (along with all amendments thereto, and all documents referenced herein and therein), along with that certain letter agreement regarding severance to be dated in or about October 2020 by and between Executive and Issuer, contain all of the terms agreed upon by the Company, Parent, Issuer and Executive with respect to the subject matter hereof and supersedes all prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written, including, without limitation, any prior offer letter; provided that this Agreement will not supersede all your equity award agreements in effect prior to the Effective Time.”

5. The last sentence of Section 5.10(b) shall be amended and restated in its entirety as follows:

“No member of the Company Group, nor any of its employees or representatives shall have any liability to Executive with respect to Section 409A.”

6. Except as amended by this Amendment, the Employment Agreement shall remain in full force and effect in accordance with its terms.

7. This Amendment may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or electronic means (including “pdf”, DocuSign or by similar means), and each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

8. This Amendment and the rights and obligations of the parties hereto shall be construed and determined in accordance with the law of Delaware, without regard to any conflict of law provisions thereof.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the date and year first written above.

MCAFEE CORP.
By: /s/ Chatelle Lynch
Name: Chatelle Lynch
Title: SVP

FOUNDATION TECHNOLOGY WORLDWIDE LLC
By: /s/ Chatelle Lynch
Name: Chatelle Lynch
Title: SVP

MCAFEE, LLC
By: /s/ Chatelle Lynch
Name: Chatelle Lynch
Title: SVP

EXECUTIVE
/s/ Venkat Bhamidipati
Venkat Bhamidipati

[Amendment to Employment Agreement]
Dear Michael:

Hello and congratulations! I am thrilled to invite you to join a talented team at McAfee, currently Intel Security, and to offer you a full time exempt position as described below. Intel Security anticipates transitioning to a stand-alone company, McAfee, LLC, in accordance with the transaction agreement entered into between Intel and TPG, currently anticipated to close in April 2017 (the “Closing”).

Section I of this offer letter addresses certain terms and conditions of employment with Intel prior to the Closing (the “Transition Period”). When the Transition Period ends, you will no longer receive compensation and benefits from Intel.

As of and following the Closing, you will become employed by McAfee, LLC or an affiliate (“McAfee”) according to certain terms and conditions of employment in Section II of this offer letter. While we expect the Closing to occur, in the unlikely event that it does not, except to the extent described under the heading “Severance”, you will not be eligible for the compensation and benefits described in Section II.

I. TRANSITION PERIOD (Intel Employment)

This first section describes the terms and conditions of your employment with Intel during the Transition Period.

During the Transition Period, you will be employed in a full-time, exempt position EVP, Intel Security Chief Financial Officer and will be reporting to me in Intel’s Intel Security Group organization. Your work location will be the Santa Clara, CA Office. Your agreed upon start date will be February 6, 2017.

Base Salary. Your annual base salary will be $475,000.

Annual Bonus. With respect to each of Intel’s fiscal years during the Transition Period and subject to the achievement of any applicable performance goals to be established by Intel, you shall be eligible to earn an annual bonus (the “Annual Bonus”) with a target amount equal to 100% of your base salary (the “Target Bonus”), subject to your continued employment with Intel through the date of payment of the annual bonus and the terms of the applicable annual bonus plan (except as described below). In the event that the Closing occurs, any unpaid amounts that are payable by Intel pursuant to this paragraph shall not be payable and you shall instead by paid an annual bonus on the same basis as other senior executives employees of McAfee, but pro-rated to reflect your hire date with Intel.

Hiring Bonus. You will receive a bonus in the first pay cycle following your hire in the amount of $1,000,000.

Quarterly Profit Bonus. You will be eligible for quarterly bonuses under the Intel Quarterly Profit Bonus (QPB) plan, subject to the terms of the QPB Plan.
Comprehensive Benefits. You will be eligible for Intel’s medical, dental, vision, short-term and long term disability and life insurance programs. In addition, you will be eligible to participate in Intel’s 401(k) Plan. You will also be eligible for pro-rated time off under Intel’s exempt vacation policy, about 3 weeks per year, and standard company holidays. Of course, each of these benefits is subject to the terms and conditions of the benefit program and plans, including waiting periods for some. Learn more right now about these and other outstanding benefits at http://www.intel.com/jobs/offer.

Because the Transition Period is anticipated to end in April 2017, during the Transition Period you will not be eligible to participate in certain other Intel benefit programs such as Intel’s stock programs (other than Intel’s employee stock purchase plan), and you will not be eligible for a discretionary Intel retirement contribution to your Intel 401(k).

Mandatory Requirements

We have to verify your eligibility to work at Intel before your start date. For example, your offer of employment is conditioned upon your satisfactory completion of a background investigation, as well as your meeting all requirements of the position offered to you. Similarly, because Intel works in technology areas that are subject to export controls by the United States government, we must obtain authorization from the Bureau of Industry and Security and the U.S. Department of Commerce before employing citizens from certain controlled countries. So, if you are a resident of a country that is subject to export controls, your offer of employment is conditioned upon Intel’s timely acquisition of an export license on your behalf. Moreover if you are a foreign national requiring sponsorship to obtain the indefinite right to work in the U.S., you must meet Intel’s sponsorship guideline by filling a position for which Intel experiences a shortage of qualified and available U.S. workers and meeting the requirements for obtaining a work visa and permanent residence. We reserve the right to withdraw your offer of employment if we are unable to secure such a license in a timely manner or if you fail to meet the conditions described in this paragraph.

Additional requirements, if any, for the anticipated transition to McAfee will be communicated in the coming months.

An Equal Opportunity Employer Intel Corporation

While Intel is an equal opportunity employer that hires thousands of people from all over the globe, the Immigration and Nationality Act requires all new Intel employees to provide documentation of their legal right to work in the United States as a condition of employment. To help you breeze through this requirement, we have provided a “List of Acceptable Employment Verification Documents” at www.intel.com/jobs/offer. All you must do is bring these documents with you to New Employee Orientation on your first day in order to complete the hiring process. It’s that easy.

“At Will” Employment

You should be aware that your employment at Intel during the Transition Period (and following the Closing, with McAfee) is “at will,” which means that both Intel (and, following the Closing, McAfee) and you have the right to end your employment at any time, with or without advance notice, and with or without cause. In addition, your employment with Intel during the Transition Period is contingent on you signing an Employment Agreement, which outlines your obligations as an employee, including among others your obligation to protect Intel’s intellectual property (as well as confidential information of your prior employers) and to follow our Employment Guidelines and Code of Conduct. You can review a copy of the Employment Agreement at www.intel.com/jobs/offer and selecting “Employment Forms.”
II. AS OF CLOSING (McAfee employment)

You will no longer receive compensation and benefits from Intel when the Transition Period ends. Effective as of the Closing, you will be employed by McAfee in the full-time, exempt position EVP & Chief Financial Officer reporting to me, your work location will be Santa Clara, CA Office and you will receive the compensation and benefits described in this Section II.

**Base Salary.** Your annual base salary will continue to be $475,000, subject to any increases that occur before the Closing.

**Total Incentive Target.** You will be eligible for the following incentive bonus programs with a total annual target of 100% of your base salary, or an annual target of $475,000 based on the base salary listed above.

- **Annual Incentive Program.** All of your total annual bonus target is anticipated to be paid out annually for the prior year based on McAfee’s financial performance, as well as (in certain cases) achievement of specified operational and/or individual goals, subject to your continued employment with McAfee through the date of payment of the annual bonus and the terms of the applicable annual bonus plan, unless otherwise described below. The attached Profile contains an estimate of your annual performance bonus payout for 2017.

- **Long-term incentive pool.** The parent holding company (“Parent”) of McAfee, LLC plans to establish a long-term incentive pool effective as of the Closing to allow key employees, such as you, to share in future increases in value of the company. As a reflection of your future achievements and contributions, your long-term incentive awards will consist of profits interests. Profits interests are a form of partnership interest in McAfee. Through your equity grant, you will share in the appreciation in the value (if any) of McAfee from the date of grant, which is expected to be the Closing. One-half of your grant will be subject to time-based vesting and the remainder will be subject to performance-based vesting. The grant will be subject to the terms and conditions of the LLC Agreement, a long-term incentive plan and the award agreement. For an illustration of your long-term incentive award, please see Addendum A. During the period beginning with the Closing and ending on June 30, 2019, you also shall be eligible for a change in control bonus as described on Addendum A.

**Looking ahead:** Your compensation, including your base pay, cash incentive target and long-term incentive grant, will be reviewed through McAfee’s annual performance review process. McAfee anticipates providing a comprehensive benefits package for eligible employees that will include a 401(k) Plan, medical, dental, vision, short-term and long term disability and life insurance programs.

Your employment with McAfee after the Closing is contingent on (i) your completion of additional documents relating to employment with McAfee, including documents related to McAfee’s code of conduct, confidentiality and trade secret protection, certain post-employment restrictions, right to work in the U.S. and export license controls, (ii) the Closing and (iii) your continued service with Intel through the Closing; provided, however, that in the event of a conflict between such post-employment restrictions and the terms of the restrictive covenants set forth in Addendum C, the terms of Addendum C will control.

* * * * *
Please note that your acceptance of this offer of employment is an acceptance of employment with Intel up until the Closing and, subject to the Closing, with McAfee as of and following the Closing. If the Closing does not occur, the terms and conditions described in Section II with respect to employment with McAfee will not apply, and Intel will be under no obligation or liability with respect to the potential future compensation and benefits described above in Section II.

**Severance.** If the Closing does not occur prior to the one-year anniversary of the commencement of your employment, if you are terminated without “Cause” or you resign for “Good Reason”, in each case prior to the Closing, you will be eligible to receive a severance amount equal to (i) one (1) year of your base salary in effect prior to your termination plus 100% of your Target Bonus, plus (ii) a payment equal to the employer contribution rate in effect for similarly situated active employees for you and your eligible dependents to continue healthcare coverage under COBRA for one (1) year, plus (iii) solely if such termination is by Intel without “Cause” and occurs prior to the date of payment of any annual bonus relating to a prior fiscal year for which you were employed on the last day, or during the fourth quarter of any fiscal year, you will be eligible to receive an annual bonus in respect of such fiscal year, based on actual performance for the applicable performance year and in accordance with the terms of the applicable annual bonus plan, prorated based on the number of days during which you were employed by Intel during the fiscal year (the “Severance Amount”). In exchange for the foregoing severance benefits, you will sign a release in the form consistent with the form attached as Addendum B hereto and the release must become fully effective within 60 days of the termination of your employment. The Severance Amount will be paid as salary continuation in accordance with Intel’s regular payroll schedule, with the first installment being due on the first regular payroll date that follows the date on which the release is fully effective and including all amounts having accrued prior to such date.

In the event you are terminated without “Cause” or you resign for “Good Reason”, in each case after Closing, you will be eligible to receive the Severance Amount set forth in the preceding paragraph (except that references to Intel and the applicable annual bonus plan shall be construed as references to McAfee and its annual bonus plan, as applicable), in exchange for your compliance with the restrictive covenants that apply to you and are attached hereto as Addendum C, and your signing of a release in the form consistent with the form attached as Addendum B hereto and the release becoming fully effective within 60 days of the termination of your employment. Such Severance Amount will be paid as salary continuation in accordance with McAfee’s regular payroll schedule, with the first installment being due on the first regular payroll date that follows the date on which the release is fully effective and including all amounts having accrued prior to such date.

“Cause” means your (i) conviction of an act of material fraud or dishonesty against McAfee or any of its affiliates; (ii) intentional refusal or willful failure to carry out the lawful and reasonable instructions of McAfee’s board of managers; (iii) commission of a felony or a misdemeanor crime involving moral turpitude, (where moral turpitude means so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community); (iv) gross misconduct or gross negligence in connection with the performance of your duties; (v) material breach of any provision of this agreement or any other employment or restrictive covenant agreement with McAfee or material violation of any material written policy or written code of conduct of McAfee or any of its affiliates that has been made available to you; (vi) breach of fiduciary duty to McAfee or any of its affiliates; (vii) failure to cooperate with McAfee or its affiliates in any investigation or formal proceeding or being found liable in a Securities and Exchange Commission enforcement action or otherwise being disqualified from serving in your job; or (viii) breach of duty of loyalty to McAfee or any of its affiliates. Notwithstanding anything herein to the contrary, during the pre-Closing period references to “McAfee” will be deemed to refer solely to “Intel” and references to “McAfee or any of its affiliates” (or similar formulations) will be deemed to refer solely to “Intel or any of its affiliates”.

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"Closing" means the earlier of the date on which McAfee shareholders approve the Shareholder Transaction, or the date on which Intel and McAfee sign a merger agreement to effectuate the Shareholder Transaction.

"Effective Date" means the date on which the Closing occurs.

"Fiscal Year" means each 12-month period ending on December 31.

"Good Reason" means the occurrence of any of the following events, or the failure of the Closing to occur prior to the one-year anniversary of the commencement of your employment:

(a) a reduction in the base salary of more than 10% in effect prior to your termination;"
“Good Reason” means in each case, without your consent: (i) a material breach of this agreement or McAfee or any of its affiliates, (ii) a material diminution of your duties, responsibilities or status, (iii) material reduction by McAfee or any of its affiliates in your base salary or your target annual bonus opportunity, (iv) the relocation of your principal place of business by more than fifty (50) miles or (v) McAfee’s failure to assume the obligations set forth in this letter agreement described as obligations of McAfee. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition you believe constitutes Good Reason you provide McAfee with a written notice (a “Good Reason Notice”) that specifically explains the basis for your belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of McAfee’s receipt of the Good Reason Notice, McAfee fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after McAfee’s receipt of the Good Reason Notice, and (z) you actually terminates your employment within sixty (60) days after McAfee’s receipt of the Good Reason Notice. Notwithstanding anything herein to the contrary, during the pre-Closing period references to “McAfee” will be deemed to refer solely to “Intel” and references to “McAfee or any of its affiliates” (or similar formulations) will be deemed to refer solely to “Intel or any of its affiliates”.

If any portion of your severance qualifies as “deferred compensation” subject to Section 409A of the Internal Revenue Code (along with the regulations thereunder, “Section 409A”) and the release could become effective in either of two taxable years, notwithstanding anything to the contrary herein the first installment of the severance will be paid on the first payroll date in the later taxable year. Each payment of severance and benefits will be treated as a “separate payment” for purposes of Section 409A and references to termination of employment will be construed to require a separation from service as defined in Section 409A (after giving effect to the presumptions set forth therein). In the event that your COBRA subsidy is determined to result in any additional tax or penalty to you, McAfee or any of its affiliates under Section 105(h) of the Internal Revenue Code or the non-discrimination provisions of the Patient Protection and Affordable Care Act, as amended, the parties agree to cooperate in good faith to restructure such benefit to avoid or minimize such issues.

During the term of your employment, (i) with the prior written consent of your employer, you may serve on the board of directors of a for-profit entity and as a director or advisor of other not-for-profit educational, welfare, social, religious and civic organizations, and (ii) you may perform charitable and other activities, and manage your personal investments; provided, however, that in the case of either (i) or (ii) such activities do not interfere with the performance of your duties hereunder and are not in conflict or competitive with, or adverse to, the interests of McAfee and its affiliates. You shall not, however, under any circumstances, provide services or advice in any capacity whatsoever for or on behalf of any entity that competes with or is competitive with McAfee and its affiliates.

During the term of your employment and thereafter, Intel and McAfee agree that each will indemnify you and provide you with Directors & Officers liability insurance coverage to the same extent that they indemnify and/or provides such insurance coverage to their most senior executive officers.

No provision of this letter agreement may be amended or waived unless such amendment or waiver is in writing, and signed by each of the parties hereto.

Not later than thirty (30) business days following the date of this Agreement, Intel shall pay or reimburse you for any and all reasonable attorneys’ fees and related costs paid in connection with your negotiation and execution of this Agreement, up to a maximum of $10,000.

AND FINALLY, we intend this offer letter to capture completely all the terms of your employment offer Please note that, your acceptance of this offer of employment is an acceptance of employment with Intel up until the Closing and with McAfee as of and following the Closing.
Intel Security has an amazing opportunity ahead of it—one that will position the business as one of the largest pure-play cybersecurity companies in the world. As a new company, McAfee will have a bold vision to achieve. We cannot achieve this vision without talented people like you.

Should you have any questions, please do not hesitate to contact me.

Sincerely,
Christopher Young
SVP and GM, Intel Security

Accepted and Agreed:

/s/ Michael Berry  
Michael Berry  
January 31, 2017  
Date
FOR AND IN CONSIDERATION OF the severance pay and benefits to be provided to me under the offer letter between me and [Intel entity name] (the “Company”)\(^1\) (the “Offer Letter”), which are conditioned on my signing this Release of Claims and to which I am not otherwise entitled, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, on my own behalf and on behalf of my heirs, executors, administrators, beneficiaries, representatives and assigns, and all others connected with or claiming through me, hereby release and forever discharge the Company, McAfee, LLC (“McAfee”) and their current and past parents, subsidiaries and other affiliates and all of their respective past, present and future officers, directors, trustees, shareholders, employees, agents, employee benefit plans, general and limited partners, members, managers, investors, joint venturers, representatives, successors and assigns, and all others connected with any of them, both individually and in their official capacities (collectively, the “Released Parties”), from any and all causes of action, rights and claims of any type or description, known or unknown, which I have had in the past, now have, or might now have, through the date of my signing of this Release of Claims, in any way related to, connected with or arising out of my employment or its termination or the Offer Letter or pursuant to any federal, state or local law, regulation or other requirement (including without limitation Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or the fair employment practices statute of the state or states in which I was previously employed by the Company or otherwise had a relationship with the Company or any of its subsidiaries or other affiliates, each as amended from time to time) (collectively, the “Released Claims”). This Release of Claims shall not apply to (a) any claim that arises after I sign this Release of Claims, (b) any rights to indemnification that I may have, (c) any claim that may not be waived pursuant to applicable law, (d) my rights to severance pay and benefits under the Offer Letter as set forth on Schedule I\(^2\), (e) my rights following the date hereof with respect to any equity interests I hold in any parent entity of McAfee or any of its affiliates or (f) my rights to any vested benefits to which I am entitled under the terms of any of the Company’s benefit plans.

In signing this Release, I expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance of such specific waiver of Section 1542, which Section states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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\(^1\) This release would be updated after closing to reflect the McAfee employer entity. Regardless of whether a qualifying termination occurred prior to the Closing or on or after the Closing, claims against both Intel and McAfee (and their respective affiliates) will be released, and this release would be updated accordingly to reflect that approach at the time of termination.

\(^2\) Schedule to reflect severance owed at termination.
Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, I expressly acknowledge that this Release is intended to include in its effect, without limitation, all Released Claims which I do not know or suspect to exist in my favor at the time of execution hereof, and that this Release contemplates the extinguishment of such Release Claim or Released Claims.

Notwithstanding the foregoing, nothing in this Release of Claims shall be construed to prohibit me from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency, except that I hereby agree to waive my right to recover monetary damages or other individual relief in any such charge, investigation or proceeding, or any related complaint or lawsuit filed by me or by anyone else on my behalf.

In signing this Release of Claims, I acknowledge my understanding that I may consider the terms of this Release of Claims for up to [twenty-one (21)/forty-five (45)] days from the date I receive it and that I may not sign this Release of Claims until after the date my employment with the Company terminates. I also acknowledge that I am hereby advised by the Company to seek the advice of an attorney prior to signing this Release of Claims; that I have had sufficient time to consider this Release of Claims and to consult with an attorney, if I wished to do so, or to consult with any other person of my choosing before signing; and that I am signing this Release of Claims voluntarily and with a full understanding of its terms.

I further acknowledge that, in signing this Release of Claims, I have not relied on any promises or representations, express or implied, that are not set forth expressly in the Release of Claims. I understand that I may revoke this Release of Claims at any time within seven (7) days of the date of my signing by written notice to the [Chief Executive Officer] of the Company and that this Release of Claims will take effect only upon the expiration of such seven-day revocation period and only if I have not timely revoked it.

Intending to be legally bound, I have signed this Release of Claims as of the date written below.

Signature: _____________________________________
Name: ________________________________________
Date Signed: ___________________________________

3 To be determined by the Company at the time of separation.
4 Appropriate person to be determined at time of termination.
This Restrictive Covenant Agreement (this “Agreement”) is made and entered into as of [•] by and between McAfee LLC (the “Company”) on its own behalf and on behalf of its Affiliates (defined below), as may exist from time to time, and Michael Berry (“Participant”). Capitalized terms used in this Agreement but not otherwise defined herein shall have their respective meanings set forth in Participant’s employment agreement or award agreement.

1. **Mutual Agreement.** Participant acknowledges the importance to the Company and its Affiliates of protecting their Confidential Information and other legitimate business interests, including the valuable trade secrets and good will that they have developed or acquired. In consideration of Participant’s Employment, Participant’s Award and other good and valuable consideration, the receipt and sufficiency of which Participant hereby acknowledges, Participant agrees that the following restrictions on Participant’s activities during and after Employment are reasonable and necessary to protect the legitimate interests of the Company.

2. **Confidentiality.**
   2.1. Participant agrees that all Confidential Information which Participant creates or to which Participant has access as a result of Participant’s Employment and other associations with the Company or any of its Affiliates is and will remain the sole and exclusive property of the Company and its Affiliates. Participant agrees that, except as required for the proper performance of Participant’s regular duties for the Company, as expressly authorized in writing in advance by a duly authorized officer of the Company, or as required by applicable law, Participant will never, directly or indirectly, use or disclose any Confidential Information. Participant understands and agrees that this restriction will continue to apply after the termination of Participant’s Employment for any reason. For the avoidance of doubt, nothing in this Agreement limits, restricts or in any other way affects Participant’s communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity. Participant will not be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (b) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Participant may be held liable if Participant unlawfully access trade secrets by unauthorized means.

   2.2. Participant agrees that all documents, records and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company or any of its Affiliates, and any copies, in whole or in part, thereof (the “Documents”), whether or not prepared by Participant, will be the sole and exclusive property of the Company. Participant agrees to safeguard all Documents and to surrender to the Company, at the time Participant’s Employment terminates or at such earlier time or times as an authorized officer of the Company may specify, all Documents then in Participant’s possession or control. Participant also agrees to disclose to the Company, at the time Participant’s Employment

5 To reflect employer entity.
terminates or at such earlier time or times as an authorized officer of the Company may specify, all passwords necessary or desirable to 
obtain access to, or that would assist in obtaining access to, any information which Participant has password-protected on any computer 
equipment, network or system of the Company or any of its Affiliates.

3. **Assignment of Intellectual Property Rights.** Participant agrees to promptly and fully disclose all Intellectual Property to the Company. Participant 
hereby assigns and agrees to assign to the Company (or as otherwise directed by the Company) Participant’s full right, title and interest in and to 
all Intellectual Property. Participant agrees to execute any and all applications for domestic and foreign patents, copyrights or other proprietary 
rights and to do such other acts (including the execution and delivery of instruments of further assurance or confirmation) requested by the 
Company to assign the Intellectual Property to the Company (or as otherwise directed by the Company) and to permit the Company to enforce any 
patents, copyrights or other proprietary rights to the Intellectual Property. Participant will not charge the Company for time spent in complying 
with these obligations. All copyrightable works that Participant creates during Employment with the Company will be considered “work made for 
hire” and will, upon creation, be owned exclusively by the Company.

4. **Restricted Activities.**

While Participant is employed by the Company and, solely to the extent such act or activity involves the use of the Company’s or its Affiliates’ trade 
secrets and other Confidential Information (as defined in Participant’s employment agreement) during the twelve (12) month period immediately 
following the date of termination of Participant’s Employment (the “Restricted Period”), Participant agrees to not, directly or indirectly, whether as 
owner, partner, investor, consultant, agent, employee, co-venturer or otherwise, engage in the Business in any geographic area in which the Company or 
any of its Affiliates engage in the Business or are actively planning to engage in the Business during Participant’s Employment or, with respect to the 
portion of the Restricted Period that follows termination of Participant’s Employment, at the time of such termination (the “Restricted Area”), 
or undertake any planning to do any of the foregoing anywhere in the Restricted Area. Specifically, but without limiting the foregoing, Participant agrees 
not to work or provide services, in any capacity, anywhere in the Restricted Area, whether as an employee, independent contractor or otherwise, whether 
with or without compensation, to any Person that is engaged in the Business; provided, however, notwithstanding the foregoing, that for purposes of this 
Agreement, Participant may engage in (i) owning, directly or indirectly, solely as an investment, up to five percent (5%) of any class of securities of any 
company (whether public or private) that is competitive or substantially similar to the Business; (ii) owning a passive equity interest in a private debt or 
equity investment fund in which Participant does not have the ability to control or exercise any managerial influence over such fund; (iii) any activity 
consented to in advance in writing by the Company, or (iv) rendering services in any capacity to a separate business unit of an entity that is engaged in 
the Business, as long as such business unit is not engaged in the Business and Participant does not render any services to, and has no participation in, the 
Business.

4.1. During the Restricted Period, Participant agrees to not, directly or indirectly, (a) solicit or encourage any customer, vendor, supplier or 
other business partner of the Company or any of its Affiliates to terminate or diminish its relationship with any of them; or (b) seek to 
persuade any customer, such vendor, supplier or other business partner or any prospective customer, vendor, supplier or other business 
partner of the Company or any of its Affiliates, to conduct with anyone else any business or activity which such customer, vendor, supplier 
or other business partner conducts, or such prospective customer, vendor, supplier or other business partner could conduct, with the 
Company or any of its Affiliates; provided,
however, that these restrictions will apply (y) only with respect to those Persons who are or have been a business partner of the Company or any of its Affiliates at any time within the six (6)-month period immediately preceding the activity restricted by this Section 4.1 or whose business has been solicited on behalf of the Company or any of the Affiliates by any of their officers, employees or agents within such six (6)-month period, other than by form letter, blanket mailing or published advertisement, and (z) only if Participant has performed work for such Person during Participant’s Employment or has been introduced to, or otherwise had contact with, such Person as a result of Participant’s Employment or other associations with the Company or any of its Affiliates or has had access to Confidential Information which would assist in Participant’s solicitation of such Person.

4.2. During the Restricted Period, Participant agrees to not, and to not assist any other Person to, directly or indirectly, (a) hire or engage, or solicit for hiring or engagement, any employee of the Company or any of its Affiliates or seek to persuade any such employee to discontinue employment or (b) solicit or encourage any independent contractor providing services to the Company or any of its Affiliates to terminate or diminish its relationship with any of them. For purposes of this Agreement, (i) an “employee” or an “independent contractor” of the Company or any of its Affiliates is any Person who was such at any time within the twelve (12)-month period immediately preceding the activity restricted by this Section 4.2 and (ii) an “independent contractor” means only a natural person independent contractor or an entity independent contractor controlled by a natural person providing services to the Company or any of its Affiliates. Notwithstanding the foregoing, for purposes of this Agreement, (i) the placement of general advertisements that may be targeted to a particular geographic or technical area but that are not specifically targeted toward employees of independent contractors of the Company; (ii) the hiring or solicitation of any Person whose services with the Company were terminated by the Company; or (iii) the hiring or solicitation of any Person who is a present or former employee, consultant, or exclusive independent contractor of the Company, if such Person has initiated contact with Participant, shall not be deemed to be a breach of this Section 4.2.

5. Nondisparagement. Subject to the third to last sentence of Section 2.1 of this Agreement, Participant agrees that he or she will not disparage or criticize the Company, its Affiliates, their business, their management or their products or services, and that Participant will not otherwise do or say anything that could disrupt the good morale of employees of the Company or any of its Affiliates or could harm the interests or reputation of the Company or any of its Affiliates.

6. Enforcement of Covenants. In signing this Agreement, Participant gives the Company assurance that Participant has carefully read and considered all of the restraints hereunder, has not relied on any agreements or representations, express or implied, that are not set forth expressly in this Agreement, and has signed this Agreement knowingly and voluntarily. Participant agrees that these restraints are necessary for the reasonable and proper protection of the Company and its Affiliates, and are reasonable in respect to subject matter, length of time and geographic area. Participant further agrees that, were Participant to breach any of the covenants contained herein, the damage to the Company and its Affiliates would be irreparable. Participant therefore agrees that the Company, in addition to any other remedies available to it, will be entitled to preliminary and permanent injunctive relief against any breach or threatened breach by Participant of any such covenants, without having to post bond. So that the Company may enjoy the full benefit of the covenants contained in Section 4 above, Participant agrees that the Restricted Period will be tolled, and will not run, during the period of any breach by Participant of such covenants. In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or
too great a range of activities, that provision will be deemed to be modified to permit its enforcement to the maximum extent permitted by law. Participant agrees that each of the Company’s Affiliates will have the right to enforce Participant’s obligations to that Affiliate under this Agreement. No claimed breach of this Agreement or other violation of law attributed to the Company or any of its Affiliates, or change in the nature or scope of Participant’s Employment or other relationship with the Company or any of its Affiliates, will operate to excuse Participant from the performance of Participant’s obligations under this Agreement.

7. **Definitions.** For purposes of this Agreement, the following definitions apply:

“Affiliates” has the meaning set forth in the Plan.

“Business” means (i) the business of providing security solutions related to computers, mobile devices, and networks, internet security products and services and/or (ii) any other business that the Company or any of its Affiliates is engaged in or is actively planning to be engaged in, during Participant’s Employment or, with respect to the portion of the Restricted Period that follows termination of Participant’s Employment, at the time of such termination.

“Confidential Information” means any and all information of the Company or any Affiliate of the Company which is not generally known by the public, including without limitation information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company or any Affiliate of the Company, unless and to the extent that any such information (i) becomes generally known to and available for use by the public other than as a result of Participant’s acts or omissions, or (ii) was properly known to Participant, without restriction, prior to disclosure by the Company.

“Intellectual Property” means inventions, discoveries, developments, improvements, methods, processes, procedures, plans, projects, systems, techniques, strategies, information, compositions, works, concepts and ideas, or modifications or derivatives of any of the foregoing (whether or not patentable or copyrightable or constituting trade secrets) (collectively, “Inventions”) conceived, made, created, developed or reduced to practice by Participant (whether alone or with others, whether or not during normal business hours or on or off Company premises) during Participant’s Employment that relate either to the business of the Company or any of its Affiliates or to any prospective activity of the Company or any of its Affiliates or that result from any work performed by Participant for the Company or any of its Affiliates or that make use of Confidential Information or any of the equipment or facilities of the Company or any of its Affiliates. Notwithstanding the foregoing, Intellectual Property does not include any Invention that qualifies fully under the provisions of California Labor Code Section 2870, the current terms of which are set forth here:

**CALIFORNIA LABOR CODE SECTION 2870**

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

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To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

8. **Compliance with Other Agreements and Obligations.** Participant represents and warrants that Participant’s Employment with the Company and the execution and performance of this Agreement will not breach or be in conflict with any other agreement to which Participant is a party or is bound, and that Participant is not now subject to any covenants against competition or similar covenants or other obligations to third parties or to any court order, judgment or decree that would affect the performance of Participant’s obligations hereunder or Participant’s duties and responsibilities to the Company. Participant will not disclose to or use on behalf of the Company or an Affiliate, or induce the Company or any of its Affiliates to possess or use, any confidential or proprietary information of any previous employer or other third party without that party’s consent.

9. **Entire Agreement; Severability; Modification.** This Agreement sets forth the entire agreement between Participant and the Company, and supersedes all prior and contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof; provided, however, that this Agreement shall not supersede any effective assignment of any invention or other intellectual property to the Company or any of its Affiliates and shall not constitute a waiver by the Company or any of its Affiliates of any right that any of them now has or may now have under any agreement imposing obligations on Participant with respect to confidentiality, non-competition, non-solicitation of employees, independent contractors or like obligations. The provisions of this Agreement are severable. This Agreement may not be modified or amended, and no breach will be deemed to be waived, unless agreed to in writing by Participant and an expressly authorized officer of the Company. Provisions of this Agreement will survive any termination if so provided in this Agreement or if necessary or desirable to accomplish the purpose of other surviving provisions.

10. **Assignment.** The Company may assign its rights and obligations under this Agreement without Participant’s consent to any of its Affiliates or to any Person with whom the Company will hereafter effect a reorganization, consolidation or merger, or to whom the Company will hereafter transfer all or substantially all of its properties or assets. This Agreement will inure to the benefit of and be binding upon Participant and the Company, and each of their respective successors, executors, administrators, heirs and permitted assigns.

11. **At-Will Employment.** Participant acknowledges that this Agreement is not meant to constitute a contract of employment for a specific duration or term, and that Participant’s employment with the Company is at-will. The Company and Participant will each retain the right to terminate Participant’s employment at any time, with or without notice or cause.

12. **Choice of Law.** This is a California contract and will be governed by and construed in accordance with the laws of the state of California, without regard to any conflict of laws principles that could result in the application of the laws of another jurisdiction. Participant agrees to submit to the exclusive jurisdiction of the courts of and in the state of California in connection with any dispute arising out of this Agreement.
Intending to be legally bound hereby, the parties have signed this Agreement as of the day and year written above.

Company: [MCAFEE LLC]

By: ________________________________
Name: ________________________________
Title: ________________________________
Participant:

Name: Michael Berry
Dear John:

I am excited to have you join the McAfee family following the closing (the "Closing") of the transaction between Intel and TPG in which Intel Security will once again become a stand-alone company named McAfee (the "Transaction"). We share a common vision of where we want to take McAfee. You are considered a key leader and driver of our vision, and your contribution is critical to the success of McAfee.

I am pleased to offer you the compensation package described below. The attached compensation profile provides an estimate of your annual compensation package (the "Profile").

**Base Salary. Your annual base salary will continue at its current level, subject to any increases that occur before the Closing.**

**Total Incentive Target.** Effective as of the Closing, you will be eligible for the following incentive bonus programs with a total annual target of 124% of your base salary, or an annual target of $583,766 based on your current base salary.

- **Annual Incentive Program.** All of your total annual bonus target is anticipated to be paid out annually for the prior year based on McAfee’s financial performance, as well as (in certain cases) achievement of specified operational and/or individual goals, subject to the terms of the Corporate Bonus Plan. The attached Profile contains an estimate of your annual performance bonus payout for 2017.

**Long-Term Incentives.** Additionally, the parent holding company ("Parent") of McAfee is establishing a long-term incentive pool to allow key employees, such as you, to share in future increases in value of the company. In recognition of your past contributions and as a reflection of your future achievements and contributions, your long-term incentive awards will consist of three elements:

- **Cash Award.** At the Closing, you will receive a cash award, the value of which will be equal to the value at the Closing of the unvested Intel RSUs that you held that are scheduled to vest during the first year following the Closing (with a value based on the closing price of Intel’s stock on the last trading day prior to the Closing, and with such amount payable without interest). This cash award will vest on the same basis as the Intel restricted stock units ("Intel RSUs") to which they relate (or pursuant to a vesting schedule with earlier vesting dates). The cash award will be subject to the terms and conditions of a long-term incentive plan and the award agreement.

- **Restricted Share Units.** At the Closing, you will receive a grant of Restricted Share Units ("RSUs"), which will have the same value (at grant) as unvested Intel RSUs that you held immediately prior to the Closing, that are scheduled to vest after the first year following the Closing. The initial value of the RSUs will be determined based on Intel’s closing price on the last trading day prior to the Closing. The RSUs will vest on the same basis as the Intel RSUs that they replace (or pursuant to a vesting schedule with earlier vesting dates), and will be payable in the form of common units of Parent. Accordingly, the value at distribution will take into account increases in value of the equity after the date of grant.

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The RSU grant will be subject to the terms and conditions of the Parent limited liability company agreement (the “LLC Agreement”), a long-term incentive plan and the award agreement.

You may elect to receive an additional cash award in lieu of the RSU grant. If you elect to receive the additional cash award instead of RSUs, the aggregate amount payable under the additional cash award will be fixed at the date of the Closing and will be equal to the number of your unvested Intel RSUs that are scheduled to vest after the first year multiplied by the Intel closing price on the last trading day prior to the Closing. You will not receive interest or share in any increase in or appreciation in the value of McAfee through this cash award. This additional cash award will vest on the same basis as the Intel RSUs to which they relate (or pursuant to a vesting schedule with earlier vesting dates). The cash award will be subject to the terms and conditions of a long-term incentive plan and the award agreement.

- **Profits Interest.** You will receive an equity grant consisting of profits interests, which is a form of partnership interest, in McAfee. Through your equity grant, you will share in the appreciation in the value of McAfee from the date of grant, which is expected to be the Closing. One-half of your grant will be subject to time-based vesting and the remainder will be subject to performance-based vesting. The grant will be subject to the terms and conditions of the LLC Agreement, a long-term incentive plan and the award agreement.

**Looking ahead:** Your compensation, including your base pay, cash incentive target and long-term incentive grants will be reviewed through McAfee’s annual performance review process. McAfee anticipates providing a comprehensive benefits package for eligible employees that will include a 401(k) Plan to be established by McAfee and medical, dental, vision, short-term and long term disability and life insurance programs. After the Closing, you will need to complete additional documents relating to employment with McAfee, including documents related to McAfee’s code of conduct, confidentiality and trade secret protection, certain post-employment restrictions, right to work in the US and export license controls. You acknowledge that this offer is expressly conditioned on your completion of such documents.

**Taxation.** Payments described in this letter will be subject to applicable taxes, deductions and withholdings.

**Effective Date.** This offer letter is contingent, and will become effective, upon the successful closing of the Transaction, subject to your continued service with Intel through the closing of the Transaction. If the Transaction does not close or your service with Intel terminates prior to the Closing, this offer will be null and void.

**Assignment and Assumption.** McAfee may assign its rights and obligations under this offer letter at any time to an affiliate or a successor, in which case, references in this offer letter to “McAfee” shall mean such affiliate or successor. In that event, the affiliate or successor will assume the rights and obligations of McAfee under this offer letter. You may not assign any of your rights or obligations hereunder.
Entire Agreement. Effective as of the Closing, this offer letter will supersede and replace all prior agreements and communications related to your Intel compensation following the Closing. This letter and your response are not intended to constitute, and shall not be construed to constitute, a contract of employment for a definite term. Employment with McAfee is on an at-will basis.

Our goal is to provide you with a rewarding career at McAfee with outstanding compensation.

John, thank you once again for all you do. We truly believe that McAfee’s best days are ahead of us. We have the assets, the technology, and the talent to win. We hope that you will be a critical part of this winning strategy and are delighted to be welcoming you to McAfee.

Sincerely,

Christopher Young
President
McAfee, Inc.

Accepted and Agreed:

_________________________  _______________________
John Giamatteo            Date  3
Dear Ash:

This letter agreement (this “Agreement”) amends and restates the terms of your employment offer letter with McAfee, LLC dated September 4, 2018 (the “Original Agreement”), and becomes effective (the “Effective Time”) as of immediately prior to the consummation of the initial public offering (the “IPO”) of Class A common stock of McAfee Corp. ("McAfee Corp."). If the IPO is not consummated on or before March 31, 2021, this Agreement shall be null and void and of no force or effect. To confirm your acceptance of this Agreement, please review this Agreement and countersign where indicated below.

As of and following the Effective Time, you will remain employed by McAfee, LLC ("McAfee" or the “Company”) according to the terms and conditions of employment in this Agreement.

**Position.** Your position will continue to be Executive Vice President and Chief Product Officer, Enterprise Business Group, reporting to the Chief Executive Officer of McAfee. Your work location will be San Jose, CA.

**Base Salary.** As part of a competitive compensation package, your annual base pay will continue to be $625,000.

**Incentive Program.** You will continue to be eligible to participate in the annual incentive program and quarterly incentive Program under McAfee’s corporate bonus plan (as in effect from time to time), with a total annual target of 100% of your annual base salary (i.e., $625,000 based on your current annual base salary). Any bonuses earned will be payable in accordance with McAfee’s corporate bonus plan, as may be amended from time to time, but in no event shall any actual bonus be paid later than 2½ months following the end of the fiscal year for which such compensation is earned. Actual bonus awards may pay below or above your annual target opportunity, including a zero payout, based on your and McAfee’s achievement of the applicable performance goals or objectives.

**Long-term incentive plan.** You will continue to be eligible to receive equity and equity-based awards in the discretion of the Board of Directors of McAfee Corp. (the “Board”) or its Compensation Committee on such terms and conditions as are determined by the Board or such committee.

**Prior Bonuses.** If you resign for any reason or are terminated for cause prior to October 31, 2020, you agree to repay $1,400,000 from the hiring and retention bonuses you received under the Original Agreement, and any repayment due will be made to the Company within 1 year following your termination date.

For purposes of this paragraph only, “cause” means your: (a) misconduct in connection with the performance of your duties as an employee of the Company; (b) commission of or plea of guilty or no contest to a felony or other crime involving moral turpitude; (c) performance of any act of
fraud, disloyalty or dishonesty in connection with or relating to the business of McAfee or its affiliates; or (d) breach of any provision of any employment or similar agreement between you and the Company or violation of any Company policies or procedures.

Performance Award. If you remain actively employed by McAfee as of May 1, 2021, not later than fifteen (15) days following such date the Company will pay you an amount in cash equal to $1,250,000, subject to all applicable tax withholding.

Comprehensive Benefits. You will continue to be eligible for our 401(k), our health benefits, dental, vision, disability and life insurance. In addition, we offer flexible work arrangements (for some roles), holidays and vacation pay, education reimbursement (with manager approval), and volunteer opportunities. Each of these benefits is subject to the terms and conditions of the benefit program and plans, including waiting periods for some. Nothing in this Agreement shall preclude the Company from amending or terminating any employee benefit plan or program, subject to the terms of the applicable plan or program.

Company Policies. As a Company employee, you agree to abide by the rules and policies of the Company, McAfee Corp. and their affiliates which may change from time to time in accordance with applicable laws. Such policies may include, without limitation, equity ownership requirements, clawback policies, insider trading policies and policies regarding hedging or pledging of securities.

At Will Employment. Your employment at McAfee is “at will,” which means that both McAfee and you have the right to end your employment at any time, with or without advance notice, and with or without cause.

Entire Agreement. We intend this Agreement to capture completely all the terms of your employment offer with respect to the subject matter hereof and, as of the Effective Time, this Agreement supersedes your Original Agreement, your letter agreement with the Company dated March 23, 2020 and all other prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written; provided that this Agreement will not supersede the letter agreement regarding severance by and among you, McAfee Corp. and McAfee to be dated in or about October 2020 (including all exhibits thereto), all your equity award agreements in effect prior to the Effective Time, any arbitration agreement with McAfee or any of its affiliates, any effective assignment of any invention or other intellectual property to McAfee or any of its affiliates or any other confidentiality, non-compete, non-solicitation of employees, independent contractors or like obligations. Nothing in this Agreement or any other agreement with the Company limits, restricts or in any other way affects you communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires you to provide notice the Company with notice of the same. You cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed under seal in a lawsuit or other proceeding.
If you have any questions, please email or call me.

Sincerely,

/s/ Chatelle Lynch
Chatelle Lynch
SVP, Chief People Officer

[Remainder of Page Intentionally Left Blank]
I understand, accept and agree to the terms of this Agreement.

/s/ Ashutosh Kulkarni
Ashutosh Kulkarni
Dear Terry:

This letter agreement (this “Agreement”) amends and restates the terms of your employment offer letter with McAfee, LLC dated September 25, 2018 (the “Original Agreement”), and becomes effective (the “Effective Time”) as of immediately prior to the consummation of the initial public offering (the “IPO”) of Class A common stock of McAfee Corp. (“McAfee Corp.”). If the IPO is not consummated on or before March 31, 2021, this Agreement shall be null and void and of no force or effect. To confirm your acceptance of this Agreement, please review this Agreement and countersign where indicated below.

As of and following the Effective Time, you will remain employed by McAfee, LLC (“McAfee” or the “Company”) according to the terms and conditions of employment in this Agreement.

Position. Your position will continue to be Executive Vice President, Consumer Business Group, reporting to the Chief Executive Officer of McAfee. Your work location will be San Jose, CA.

Base Salary. As part of a competitive compensation package, your annual base pay will be $650,000.

Annual Incentive Program. Your annual target for the annual incentive bonus program will be 115.39% of your annual base salary (i.e., $750,000 based on your current annual base salary). Your annual bonus, if any, is anticipated to be paid out annually for the prior fiscal year (but in no event shall any actual bonus be paid later than 2½ months following the end of the fiscal year for which such compensation is earned) based upon McAfee’s financial performance, as well as achievement of specified operational and/or individual goals and your continued employment with McAfee through the date of payment of the annual bonus, in each case, subject to the terms of the corporate bonus plan (as in effect from time to time). Actual bonus awards may pay below or above your annual target opportunity, including a zero payout, based on your and McAfee’s achievement of the applicable performance goals or objectives.

Long-Term Incentive Plan. You will continue to be eligible to receive equity and equity-based awards in the discretion of the Board of Directors of McAfee Corp. (the “Board”) or its Compensation Committee on such terms and conditions as are determined by the Board or such committee.

Comprehensive Benefits. You will continue to be eligible for our 401(k), our health benefits, dental, vision, disability and life insurance. In addition, we offer flexible work arrangements (for some roles), holidays and vacation pay, education reimbursement (with manager approval), and volunteer opportunities. Each of these benefits is subject to the terms and conditions of the benefit program and plans, including waiting periods for some. Nothing in this Agreement shall preclude the Company from amending or terminating any employee benefit plan or program, subject to the terms of the applicable plan or program.
Company Policies. As a Company employee, you agree to abide by the rules and policies of the Company, McAfee Corp. and their affiliates which may change from time to time in accordance with applicable laws. Such policies may include, without limitation, equity ownership requirements, clawback policies, insider trading policies and policies regarding hedging or pledging of securities.

At Will Employment. Your employment at McAfee is “at will,” which means that both McAfee and you have the right to end your employment at any time, with or without advance notice, and with or without cause.

Entire Agreement. We intend this Agreement to capture completely all the terms of your employment offer with respect to the subject matter hereof and, as of the Effective Time, this Agreement supersedes your Original Agreement and all other prior agreements, arrangements and communications between the parties dealing with such subject matter, whether oral or written; provided that this Agreement will not supersede the letter agreement regarding severance by and among you, McAfee Corp. and McAfee to be dated in or about October 2020 (including all exhibits thereto), all your equity award agreements in effect prior to the Effective Time, any arbitration agreement with McAfee or any of its affiliates, any effective assignment of any invention or other intellectual property to McAfee or any of its affiliates or any other confidentiality, non-competition, non-solicitation of employees, independent contractors or like obligations. Nothing in this Agreement or any other agreement with the Company limits, restricts or in any other way affects you communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires you to provide notice the Company with notice of the same. You cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed under seal in a lawsuit or other proceeding.

If you have any questions, please email or call me.

Sincerely,

/s/ Chatelle Lynch
Chatelle Lynch
SVP, Chief People Officer

[Remainder of Page Intentionally Left Blank]
I understand, accept and agree to the terms of this Agreement.

/s/ Terry Hicks
Terry Hicks

[Signature Page to Offer Letter]
April 6, 2020

Lynne Doherty

Dear Lynne:

Hello and congratulations! On behalf of McAfee, LLC, I am thrilled to invite you to join a talented team of 7,000 passionate people around the globe and to offer you the full-time position of EVP, Global Sales and Marketing reporting to Peter Leav.

Some particulars. Your work location will be Washington, DC. Your new position is exempt, and you will be paid on a salaried basis. As part of a competitive compensation package, your annual base pay will be $850,000.

Additionally, you will be eligible to participate in an annual incentive plan with a total annual target of 105.9% of your base salary, or $900,000.

Long-term incentive plan

The parent holding company ("Parent") of McAfee has established a long-term incentive plan that allows key employees, such as you, to share in the value of the company. As a reflection of your future achievements and contributions, your long-term incentive awards are expected to consist of profits interests (Management Incentive Units or "MIUs"), a form of partnership interest in Parent, and restricted equity units ("RSUs"). Approximately 75% of your targeted award value would be comprised of MIUs and approximately 25% of your targeted award value would be comprised of RSUs. Through MIUs, you would share in the appreciation in the value, if any of McAfee from the date of grant. Through RSUs, you would share in the value of the company irrespective of any change in value from the date of grant, as RSUs are generally settled upon vesting in Parent’s common equity units. Your grant will be subject to time-based vesting conditions. The grant will be subject to the terms and conditions of Parent’s LLC agreement, a long-term incentive plan, and the award agreements. For additional information regarding your long-term incentive award, please see Addendum A.

Hiring Bonus

We’re pleased to offer you a hiring bonus package totaling $1,500,000 (less required tax withholdings and deductions) to be paid in the following installments: $500,000 to be earned on June 30, 2020; $500,000 to be earned on September 30, 2020; $500,000 to be earned on December 31, 2020. You must remain employed through each payment date in order to earn the associated hiring bonus payment. Hiring bonuses are expected to pay in the next 1-2 pay cycles after being earned.
Additionally, you understand and agree that if you resign for any reason or are terminated for cause (i) on or prior to June 30, 2021, you agree to repay 100% ($1,500,000) of the hiring bonus package to the Company, or (ii) on or between July 1, 2021 and September 30, 2021 you agree to repay $1,000,000 of the hiring bonus package to the company, or (iii) on or between October 1, 2021 and December 31, 2021 you agree to repay $500,000 of the hiring bonus package to the Company, and any repayment due will be made to the Company within 30 days following your termination date.

Severance

In the event you are terminated without “Cause” or you resign for “Good Reason”, you will be eligible to receive a severance amount equal to (i) one (1) year of your base salary in effect prior to your termination, plus (ii) a payment equal to the employer contribution rate in effect for similarly situated active employees for you and your eligible dependents to continue healthcare coverage under COBRA for one (1) year (the “Severance Amount”). In exchange for the foregoing severance benefits, you will sign a release in the form consistent with the form attached as Addendum B hereto and the release must become fully effective within sixty (60) days of the termination of your employment. The Severance Amount will be paid as salary continuation in accordance with McAfee’s regular payroll schedule, with the first installment being due on the first regular payroll date that follows the date on which the release is fully effective and including all amounts having accrued prior to such date.

“Cause” means your (i) conviction of an act of material fraud or dishonesty against McAfee or any of its affiliates; (ii) intentional refusal or willful failure to carry out the lawful and reasonable instructions of McAfee’s board of managers; (iii) commission of a felony or a misdemeanor involving moral turpitude (where moral turpitude means so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community); (iv) gross misconduct or gross negligence in connection with the performance of your duties; (v) material breach of any provision of this agreement or any other employment or restrictive covenant agreement with McAfee or material violation of any material written policy or written code of conduct of McAfee or any of its affiliates that has been made available to you; (vi) breach of fiduciary duty to McAfee or any of its affiliates; (vii) failure to cooperate with McAfee or its affiliates in any investigation or formal proceeding or being found liable in a Securities and Exchange Commission enforcement action or otherwise being disqualified from serving in your job; or (vii) breach of duty of loyalty to McAfee or any of its affiliates.

“Good Reason” means in each case, without your consent: (i) a material breach of this agreement by McAfee or any of its affiliates, (ii) a material diminution of your duties, responsibilities or status, (iii) material reduction by McAfee or any of its affiliates in your base salary or your target annual bonus opportunity, (iv) the relocation of your principal place of business by more than fifty (50) miles; or (v) McAfee’s failure to assume the obligations set forth in this letter agreement described as obligations of McAfee. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition you believe constitutes Good Reason you provide McAfee with a written notice (a “Good Reason Notice”) that specifically explains the basis for your belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of McAfee’s receipt of the Good Reason Notice, McAfee fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after McAfee’s receipt of the Good Reason Notice, and (z) you actually terminate your employment within sixty (60) days after McAfee’s receipt of the Good Reason Notice.
If any portion of your severance qualifies as “deferred compensation” subject to Section 409A of the Internal Revenue Code (along with the regulations thereunder, “Section 409A”) and the release could become effective in either of two taxable years, notwithstanding anything to the contrary herein the first installment of the severance will be paid on the first payroll date in the later taxable year. Each payment of severance and benefits will be treated as a “separate payment” for purposes of Section 409A and references to termination of employment will be construed to require a separation from service as defined in Section 409A (after giving effect to the presumptions set forth therein). In the event that your COBRA subsidy is determined to result in any additional tax or penalty to you, McAfee or any of its affiliates under Section 105(h) of the Internal Revenue Code or the non-discrimination provisions of the Patient Protection and Affordable Care Act, as amended, the parties agree to cooperate in good faith to restructure such benefit to avoid or minimize such issues.

Comprehensive Benefits

McAfee is a great place to work. One of the reasons this holds true is the collection of outstanding benefits we offer. You will be eligible for our 401(k), our health benefits, dental, vision, disability and life insurance. In addition, we offer flexible work arrangements (for some roles), holidays and unlimited PTO, education reimbursement, and volunteer opportunities. Of course, each of these benefits is subject to the terms and conditions of the benefit program and plans, including waiting periods for some.

Mandatory Requirements

We have to verify your eligibility to work at McAfee before your start date. For example, your offer of employment is conditioned upon your satisfactory completion of a background investigation, as well as your meeting all requirements of the position offered to you. Similarly, because McAfee works in technology areas that are subject to export controls by the United States government, we must obtain authorization from the Bureau of Industry and Security and the U.S. Department of Commerce before employing citizens from certain controlled countries. If you are subject to export controls, your offer of employment is contingent upon McAfee’s timely acquisition of an export license on your behalf. Moreover if you are a foreign national requiring sponsorship to obtain the indefinite right to work in the U.S., you must meet McAfee’s sponsorship guideline by filling a position for which McAfee experiences a shortage of qualified and available U.S. Workers and meeting the requirements for obtaining a work visa and permanent residence. We reserve the right to withdraw your offer of employment if we are unable to secure such a license in a timely manner or if you fail to meet the conditions described in this paragraph.

While McAfee is an equal opportunity employer that hires thousands of people from all over the globe, the Immigration and Nationality Act requires all new McAfee employees to provide documentation of their legal right to work in the United States as a condition of employment. To help you breeze through this requirement, we have provided a “List of Acceptable Employment Verification Documents” at www.uscis.gov/i-9-central/acceptable-documents. All you need to do is bring these documents with you on your first day in order to complete the hiring process. It’s that easy.
Your employment at McAfee is "at will," which means that both McAfee and you have the right to end your employment at any time, with or without advance notice, and with or without cause. In addition, your employment is contingent on you signing the enclosed Proprietary Information and Inventions Assignment Agreement and Arbitration Agreement. These documents outline your obligations as an employee and provide a framework for the resolution of any disputes that may arise out of your employment. Both must be signed and returned prior to your start date.

Finally, we intend this offer letter to capture completely all the terms of your employment offer. If you think we have missed something, please let us know ASAP. Additionally, if you don’t start on the start date we agreed upon with you, this offer could be rescinded.

To indicate your acceptance of McAfee, Inc.’s offer, please sign and return this letter to Chatelle Lynch within seven (7) days from offer date.

We are excited to have you join the McAfee team.

Sincerely,

Chatelle Lynch
SVP, Chief People Officer

I understand, accept and agree to the terms of this letter.

Lynne Doherty
Signature of Candidate

4/10/2020
Date
ADDENDUM B

Form of Release

RELEASE OF CLAIMS

FOR AND IN CONSIDERATION OF the severance pay and benefits to be provided to me under the offer letter between me and McAfee, LLC (the "Company") dated April 6, 2020 (the "Offer Letter"), which are conditioned on my signing this Release of Claims and to which I am not otherwise entitled, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, on my own behalf and on behalf of my heirs, executors, administrators, beneficiaries, representatives and assigns, and all others connected with or claiming through me, hereby release and forever discharge the Company and its current and past parents, subsidiaries and other affiliates and all of their respective past, present and future officers, directors, trustees, shareholders, employees, agents, employee benefit plans, general and limited partners, members, managers, investors, joint venturers, representatives, successors and assigns, and all others connected with any of them, both individually and in their official capacities (collectively, the "Released Parties"), from any and all causes of action, rights and claims of any type or description, known or unknown, which I have had in the past, now have, or might now have, through the date of my signing of this Release of Claims, in any way related to, connected with or arising out of my employment or its termination, the Offer Letter, the offer letter with the Company executed in December 2016, or pursuant to any federal, state or local law, regulation or other requirement (including without limitation Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or the fair employment practices statute of the state or states in which I was previously employed by the Company or otherwise had a relationship with the Company or any of its subsidiaries or other affiliates, each as amended from time to time) (collectively, the "Released Claims").

This Release of Claims shall not apply to (a) any claim that arises after I sign this Release of Claims, (b) any rights to indemnification that I may have, (c) any claim that may not be waived pursuant to applicable law, (d) my rights to severance pay and benefits under the Offer Letter as set forth on Schedule 1, (e) my rights following the date hereof with respect to any equity interests I hold in any parent entity of McAfee or any of its affiliates or (f) my rights to any vested benefits to which I am entitled under the terms of any of the Company's benefit plans.

For the purpose of implementing a full and complete release and discharge of the Released Parties, I expressly acknowledge that this Release is intended to include in its effect, without limitation, all Released Claims which I do not know or suspect to exist in my favor at the time of execution hereof, and that this Release contemplates the extinguishment of such Released Claims.

Notwithstanding the foregoing, nothing in this Release of Claims shall be construed to prohibit me from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency, except that I hereby agree to waive my right to recover monetary damages or other individual relief in any such charge, investigation or proceeding, or any related complaint or lawsuit filed by me or by anyone else on my behalf.

1 Schedule to reflect severance owed at termination.
In signing this Release of Claims, I acknowledge my understanding that I may consider the terms of this Release of Claims for up to [twenty-one (21)/forty-five (45)]\textsuperscript{2} days from the date I receive it and that I may not sign this Release of Claims until after the date my employment with the Company terminates. I also acknowledge that I am hereby advised by the Company to seek the advice of an attorney prior to signing this Release of Claims; that I have had sufficient time to consider this Release of Claims and to consult with an attorney, if I wished to do so, or to consult with any other person of my choosing before signing; and that I am signing this Release of Claims voluntarily and with a full understanding of its terms.

I further acknowledge that, in signing this Release of Claims, I have not relied on any promises or representations, express or implied, that are not set forth expressly in the Release of Claims. I understand that I may revoke this Release of Claims at any time within seven (7) days of the date of my signing by written notice to the [Chief Executive Officer]\textsuperscript{3} of the Company and that this Release of Claims will take effect only upon the expiration of such seven-day revocation period and only if I have not timely revoked it.

Intending to be legally bound, I have signed this Release of Claims as of the date written below.

Signature: __________________________
Name: __________________________
Date Signed: ________________________

\textsuperscript{2} To be determined by the Company at the time of separation.

\textsuperscript{3} Appropriate person to be determined at time of termination.
June 11, 2018

John Giamatteo

Dear John:

On behalf of McAfee, LLC, I am thrilled to offer you a new and exciting role at McAfee in the full time exempt position of President and Chief Revenue Officer, Corporate. You will continue to report to Chris Young, Chief Executive Officer, and your work location will remain Plano, Texas. Upon acceptance of your new role as evidenced by your signature on this promotional offer letter, you will receive the compensation and benefits described below.

**Base Salary.** Your new annual base salary will be $650,000 effective June 1, 2018.

**Total Incentive Target.** Your new annual target for the annual incentive bonus program will be $850,000, effective June 1, 2018. Your 2018 annual incentive bonus will be adjusted to reflect the portion of the performance period correlating with the respective annual target for your role at McAfee (5/12 based upon your existing annual target, and 7/12 based upon your new annual target). Consistent with your current annual incentive bonus opportunity, your total annual bonus target is anticipated to be paid out annually for the prior year based upon McAfee’s financial performance, as well as achievement of specified operational and/or individual goals and your continued employment with McAfee through the date of payment of the annual bonus, in each case subject to the terms of the corporate bonus plan.

**Recognition Bonus.** You will receive a one-time cash recognition bonus in the amount of $500,000, payable in the first pay cycle following the acceptance of your promotional offer letter. You must remain employed with a McAfee company through the date of payment in order to receive the recognition bonus. If (i) you terminate your employment with McAfee, or (ii) McAfee terminates your employment for Cause (as defined below) (or your employment terminates at a time when it is determined by McAfee that Cause exists), in either case, within twelve (12) months of the date on which the recognition bonus is paid, you will be required, not later than thirty (30) days after the date of such termination, to repay the gross amount of the recognition bonus to McAfee. If you do not timely pay such amount, subject to applicable law, McAfee will be permitted to recover such amount by reducing the amount that would otherwise be payable to you under any compensatory plan, program or arrangement maintained by McAfee.

**Cash Retention Bonuses.** You will receive cash retention bonuses in the total amount of $1,500,000, payable in three $500,000 increments on June 1st of each of 2019, 2020 and 2021. You must remain employed with a McAfee company through the date of payment in order to receive each such retention bonus. If (i) you terminate your employment with McAfee, or (ii) McAfee terminates your employment for Cause (or your employment terminates at a time when it is determined by McAfee that Cause exists),
in either case, within twelve (12) months of the date on which any such retention bonus is paid, you will be required, not later than thirty (30) days after the date of such termination, to repay the gross amount of the most recent retention bonus to McAfee. If you do not timely pay such amount, subject to applicable law, McAfee will be permitted to recover such amount by reducing the amount that would otherwise be payable to you under any compensatory plan, program or arrangement maintained by McAfee.

**Long-Term Incentive Awards.** As a reflection of your future achievements and contributions, we will recommend to the Board of Managers of McAfee’s parent holding company (“Parent”) that you be awarded additional long-term incentive awards consisting of profits interests (Management Incentive Units or (“MIUs”), a form of partnership interest in Parent, and restricted equity units (“RSUs”), which are generally settled upon vesting in Class A common equity units of Parent.

**MIU Award.** The total value of your MIU award is estimated to be $6,500,000. In order to vest in your MIU award, you must be continuously employed by a McAfee company from the date of grant to the date of vesting, unless your employment is terminated without “cause” (as customarily defined in the MIU award agreement) within two years following a change in control of McAfee, in which case your time-based vesting awards would accelerate in full.

**RSU Award.** The total value of your RSU award is estimated to be $3,000,000, based upon the fair market value of Parent’s Class A common equity units at the time of grant. Your RSU award is not subject to performance-based vesting conditions. In order to vest in your RSU award, you must be continuously employed by a McAfee company from the date of grant to the date of vesting, unless your employment is terminated without Cause (as defined below), in which case McAfee will pay you a cash amount equal to the fair market value upon termination of service of any unvested RSUs subject to the RSU award (with such unvested RSUs forfeited upon termination of service). For the avoidance of doubt, the vesting terms applicable to the RSU award described in this promotional offer letter are unique to this one-time RSU award, and are not applicable to any other RSU award that you have or may receive.

**Award Agreements.** The description of your MIU and RSU awards contained in this letter is a high-level summary only and necessarily incomplete. The definitive terms of your MIU and RSU awards will be set forth in award agreements that will govern your awards, and in the event of any conflict between this description and that document, the award agreements (and the documents they reference) will control. Of course, we cannot guarantee that you will receive the full value of your awards, nor achievement by the company of our long-range plan exit equity value.

**Equity Sale Opportunity.** In addition, you will have the unique opportunity during each of the next three (3) years to elect to sell back to Parent up to $1,000,000 in Parent’s Class A common equity units (whether you acquired the Class A common equity units via subscription or settlement upon vesting of an RSU award). Should you wish to exercise this sale right, you must email McAfee’s General Counsel not later than thirty (30) days following June 1st of each of 2019, 2020 and 2021, and specify the value of Parent’s Class A common equity units that you wish to sell. You may sell an amount not to exceed $1,000,000 per year; provided, that, if you elect to sell an amount less than $1,000,000 in 2019 or 2020, the difference between the maximum eligible sales amount and the amount sold will carry forward to the following year, with the aggregate amount sold over such three-year period not to exceed $3,000,000. The fair market value of Parent’s Class A common equity units on the date you deliver the email notice will determine the number of units subject to the repurchase transaction. Upon receipt of any such notice, Parent will promptly deliver to you a customary unit repurchase agreement setting forth the terms and conditions of the repurchase event. The parties will consummate the unit repurchase as soon as reasonably practicable in accordance with applicable securities laws and, to the extent applicable, publicly-traded partnership tax safe harbors. In order to avail yourself of each right of sale, you must remain continuously employed with a McAfee company through the date you deliver any notice of unit sale.
Severance. In the event you are terminated without “Cause”, you will be eligible to receive a severance amount equal to (i) one (1) year of your base salary in effect prior to your termination, plus (ii) a payment equal to the employer contribution rate in effect for similarly situated active employees for you and your eligible dependents to continue healthcare coverage under COBRA for one (1) year, plus (iii) 100% of your target annual incentive bonus amount in effect prior to your termination, plus (iv) any remaining unpaid portion of the special $1,500,000 cash retention bonus described above, plus (v) a cash amount, equal to the fair market value upon termination of service of any unvested RSUs subject to the special $3,000,000 RSU award described above (with such unvested RSUs forfeited upon termination of service) (the “Severance Amount”). Your receipt of the foregoing severance benefits shall be subject to the execution and non-revocation by you of a general release of claims in a form acceptable to McAfee, and the release must become fully effective within sixty (60) days of the termination of your employment. The Severance Amount will be paid as salary continuation in accordance with McAfee’s regular payroll schedule, with the first installment being due on the first regular payroll date that follows the date on which the release is fully effective and including all amounts having accrued prior to such date.

“Cause” means McAfee, LLC’s reasonable belief that you have engaged in any one of the following: (i) financial dishonesty, including, without limitation, misappropriation of funds or property, or any attempt by you to secure any personal profit related to the business or business opportunities of McAfee, LLC without the informed, written approval of McAfee, LLC’s Board of Managers; (ii) refusal to comply with reasonable directives of your direct supervisor or McAfee, LLC’s Board of Managers after thirty (30) days notice and an opportunity to cure; (iii) reckless or willful misconduct in the performance of your duties in the event such conduct continues after thirty (30) days written notice and an opportunity to cure; (iv) misconduct which has a material adverse effect upon McAfee, LLC’s business or reputation; (v) the conviction of, or plea of nolo contendere to, any felony or a misdemeanor involving dishonesty or fraud; (vi) your material breach of any provision of this agreement after thirty (30) days notice of such breach and a reasonable opportunity to cure such breach; (vii) your breach of the Employee Inventions Proprietary Rights Assignment Agreement; or (viii) violation of McAfee, LLC’s policies including, without limitation, its policies on equal employment opportunity and prohibition of unlawful harassment after thirty (30) days notice of such breach and a reasonable opportunity to cure such breach.

If any portion of your severance qualifies as “deferred compensation” subject to Section 409A of the Internal Revenue Code (along with the regulations thereunder, “Section 409A”) and the release could become effective in either of two taxable years, notwithstanding anything to the contrary herein the first installment of the severance will be paid on the first payroll date in the later taxable year. Each payment of severance and benefits will be treated as a “separate payment” for purposes of Section 409A and references to termination of employment will be construed to require a separation from service as defined in Section 409A (after giving effect to the presumptions set forth therein). In the event that your COBRA subsidy is determined to result in any additional tax or penalty to you, McAfee or any of its affiliates under Section 105(h) of the Internal Revenue Code or the non-discrimination provisions of the Patient Protection and Affordable Care Act, as amended, the parties agree to cooperate in good faith to restructure such benefit to avoid or minimize such issues.

“At Will” Employment. Your employment with McAfee remains “at will,” which means that McAfee and you have the right to end your employment at any time for any reason, with or without advance notice, and with or without cause.
McAfee has an amazing opportunity ahead and a bold vision to achieve. We cannot achieve this vision without supremely talented people like you!

Should you have any questions, please email me.

Sincerely,

Chatelle Lynch  
Chief Human Resources Officer

Accepted and Agreed:

/s/ John Giamatteo  
John Giamatteo  
June 11, 2018  
Date
TERMS

1. Termination and Benefits.
   a. Accrued Benefits. Effectively as of January 10, 2020 (the “Termination Date”), you shall be deemed to have voluntarily resigned from your employment with the Company, and any and all other positions with the Company shall terminate by voluntary resignation. Provided you remain employed with the Company through the Termination Date, the Company agrees to provide you with your current base salary through the Termination Date. To the extent that you are owed reimbursement for business expenses timely submitted, the Company will reimburse those expenses in accordance with Company policy. The payments in this Section 1(a) will be paid in accordance with the Company’s normal payroll schedule. You will also be entitled to participate in COBRA benefits as permitted by law, and will receive information about such benefits under separate cover.
   b. Severance Pay. Provided that you remain employed with the Company through the Termination Date, comply with your employment obligations through the Termination Date, execute, deliver, and do not revoke this Agreement, execute, deliver, and do not revoke Termination Release attached hereto as Exhibit A (the “Termination Release”), and comply with the terms of this Agreement, then, in exchange for your promises in this Agreement
and other good and valuable consideration, you are eligible for the following Severance Pay (defined below) and Bonus Severance (defined below) as follows:

(i) McAfee will pay you an amount equal to $3,972,136.50, less all applicable taxes and withholdings (the “Severance Pay”), in equal installments over the period of twelve (12) months after the Termination Date in accordance with the Company’s normal payroll policy with the final installment payment scheduled to occur not later than December 31, 2020; provided, however, that you will not be entitled to the last installment payment unless you execute, deliver, and do not revoke the Final Release attached hereto as Exhibit B (the “Final Release”) and until the occurrence of the Final Release Effective Date (as defined in the Final Release). McAfee will promptly issue or otherwise make available to you a written statement for each installment payment detailing the gross payment amount, applicable taxes and withholdings, and net payment amount.

(ii) Notwithstanding the Termination Date preceding the date on which any annual incentive bonus for the 2019 performance becomes payable under the Company’s annual incentive plan, you will be deemed to be eligible to receive an annual incentive bonus for the 2019 performance period (the “Bonus Severance”). The amount of any Bonus Severance will be determined in the sole and absolute discretion of the Compensation Committee of the Company’s Board of Managers in accordance with the terms of the Company’s annual incentive plan and authority pursuant to the Compensation Committee Charter. Any Bonus Severance will be paid in a lump sum, less all applicable taxes and withholdings, not later than March 31, 2020.

You acknowledge and agree that the Severance Pay and Bonus Severance are in full satisfaction of any and all Severance Benefits and reflects all benefits, compensation, and severance amounts to which you would otherwise be entitled under the Letter Agreement or any other agreement, policy, or plan, and that you will not be entitled to the Severance Pay or Bonus Severance in the event you do not sign or revoke the Termination Release or the Final Release.

c. Equity interests. The Parties acknowledge and agree that you have previously been granted equity interests in the Company pursuant to the Equity Agreements. You acknowledge and agree that any and all unvested equity interests issued pursuant to the Equity Agreements that are outstanding as of January 10, 2020, and any and all other equity interests under any other agreements or plans, are cancelled and forfeited. For the avoidance of doubt, all vested equity interests issued pursuant the Equity Agreements that are outstanding as of January 10, 2020 shall remain outstanding until such interests are sold, cancelled or forfeited (e.g., violation of Restrictive Covenant Agreement).

2. Acknowledgement. Other than what has already been received or that may be due under this Agreement, you acknowledge and agree that you have received all compensation and benefits owed by the Company and that the Company does not owe you any additional compensation or benefits, including but not limited to accrued vacation time, sick time, or personal time. You acknowledge and agree that your eligibility for any other employee benefit programs maintained by the Company for current employees will cease as of the Termination Date. The Company reserves any and all of its rights with respect to any Company-affiliated awards or equity participation made available to you under the applicable award agreements, subscription agreements, and/or plan documentation.

3. General Release of Claims. In exchange for the payments and benefits set forth herein and other good and valuable consideration, you fully release and discharge the Company, Foundation Technology Worldwide LLC, Manta Holdings, L.P., f/k/a TPG VII Manta Holdings, L.P., McAfee, LLC and Intel Corporation, and each of their respective predecessors and successors, and the respective present and former directors, managers, officers, shareholders, employees, investors, agents, parents, benefit plans, equity compensation plans, trustees, subsidiaries, affiliates, assigns of all of the foregoing (collectively, the “Releases”), from any and all claims of any kind whatsoever, known or unknown, which arose on or before the Effective Date, including but not limited to any claim related to your employment with the Company and termination thereof, except those claims that the law does not permit you to waive. The claims you hereby waive include, without limitation, all common law contract, tort, or other claims you might have, as well as all claims you might have under the Civil Rights Act of 1964 (including Title VII of that Act), the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Older Workers Benefits Protection Act (OWBPA), the Americans with Disabilities Act of 1990 (ADA), the Family and Medical Leave Act of 1993 (FMLA), the Worker Adjustment and Retraining Notification Act (WARN), the Employee Retirement Income Security Act of 1974 (ERISA), the National Labor Relations Act (NLRA), all of their amendments, the Sarbanes-Oxley Act, or under any applicable state or local laws or ordinances or any
other legal restrictions on the Company’s rights, including the Texas Commission on Human Rights Act, the Texas Workforce Commission, and any and all other federal, state and local laws, any claims arising out of or relating to the tax treatment of any of the payments you receive pursuant to Section 1 hereof, any claims for attorneys’ fees and costs, the Equity Agreements, the Plans, the Letter Agreement, and any claims arising under any other agreements between you and any Releasee.

4. **ADEA Waiver.** This Agreement includes a release of claims for age discrimination under the Age Discrimination in Employment Act of 1967 (the “ADEA”). In accordance with the ADEA, you acknowledge that the ADEA requires that you be advised to consult with an attorney before waiving any claim under the ADEA, and you recognize that, by this Agreement, you have been so advised. You have up to twenty-one (21) days from the date you receive this Agreement to consider whether to sign it. To accept this Agreement, you must sign and return it to the attention of Chatelle Lynch, SVP & Chief People Officer, with the original mailed to her at: 5000 Headquarters Blvd., Plano, TX, 75024. You have seven (7) calendar days after signing this Agreement to revoke it. To revoke this Agreement, you must deliver a written notice of revocation to Chatelle Lynch before the seven-day period expires. The Agreement will not become effective until the eighth (8th) calendar day after you sign it (the “Effective Date”).

5. **Release Exclusions.** This Agreement does not affect any rights you may have to receive unemployment compensation benefits, workers’ compensation benefits, or any claim which, by operation of law, may not be waived or which arises after the date on which this Agreement becomes effective. Nothing contained in this Agreement limits your ability to file a charge or complaint with any government agencies or limits your ability to provide information to or communicate with any government agencies or otherwise participate in any investigation or proceeding that may be conducted by any government agencies in connection with any charge or complaint, whether filed by you, on your behalf, or by any other individual. However, to the maximum extent permitted by law, you agree that if such a charge or complaint is made, you shall not be entitled to recover any individual monetary relief or other individual remedies. This Agreement does not limit or prohibit your right to receive an award for information provided to any government agency to the extent that such limitation or prohibition is a violation of law.

6. **Representations and Promises.** The following representations and promised are being relied upon by the Company in entering into this Agreement, and they survive the execution of this Agreement. You represent, warrant and agree that:
   a. You are intentionally releasing claims against the Releasees that you may not know that you have and that, with hindsight, you might regret having released. You agree that such general release is fairly and knowingly made.
   b. The Company would not have been obligated to provide you the payments and benefits described in this Agreement without the promises you are making here.
   c. You have had sufficient time to consider and have resolved all doubts and concerns about the subjects in this Agreement before signing this Agreement, and you are entering into this Agreement freely and voluntarily.
   d. You were advised by this Agreement to consult with an attorney before signing it and you have had an adequate opportunity to do so.
   e. You have carefully read this Agreement, and fully understand what it means. You enter into it knowingly and voluntarily, and all of your representations here are true.
   f. You are not relying upon any statements, understanding, expectations, or agreements other than those expressly set forth in this Agreement, and are relying solely on your own knowledge and the advice of your legal counsel, if any.
   g. You knowingly waive any claim that this Agreement has been induced by any misrepresentation, omission, or nondisclosure and any right to rescind or avoid this Agreement based upon presently existing facts, known or unknown.
   h. Nothing in this Agreement shall be construed as an admission that the Company or any Releasee engaged in any improper or unlawful conduct.
Withholdings. All payments under or otherwise relating to this Agreement are subject to all appropriate taxes, deductions and withholdings as determined by the Company. This Agreement and any payments or benefits provided hereunder are intended to either qualify as short-term deferrals for purposes of Section 409A of the Internal Revenue Code or otherwise be exempt therefrom, and will be interpreted, construed, and performed by the parties consistent with such intent.

Clawback. The Parties acknowledge and agree that the Company may claw back and recover any bonus or other incentive compensation provided to you pursuant to this Agreement or any agreement you have with the Company, the Sarbanes-Oxley Act, and other applicable law, and you hereby consent to the Company doing so to the maximum extent permitted by law, after written notice of the amount subject to claw back and the basis for such claw back. To the extent that you received or receive any amount in excess of the amount that you should otherwise have received under the terms of the applicable compensation plan, program, agreement or arrangement (including, without limitation, by reason of a financial restatement, mistake in calculations or other administrative error) you shall be required to repay any such excess amount to the Company.

Continuing Post-Employment Obligations. You understand that nothing in this Agreement relieves or excuses you from the existing or post-employment obligations that you owe to the Company or any of the Releasees in accordance with other written agreements between the parties (and applicable documents relating thereto) and in particular: the Restrictive Covenant Agreements, the Plans, and the Equity Agreements. You acknowledge and agree that any and all such obligations remain in full force and effect.

Confidentiality. You agree that you will not disclose this Agreement or its terms to any third party, whether individual or entity, except as may be required by law; provided, however, that you will not be prohibited from making disclosures on a confidential basis to your spouse, attorney(s), tax advisor(s), and financial planner(s).

Return of Company Property. You recognize that you are obligated to, and will return to the Company any and all Company property (files, documents, laptop, company-issued mobile device or phone, keys, credit cards, etc.) and any and all property in your possession by the Termination Date. You agree you will not erase, or instruct any third person to erase, data from any Company equipment (i.e., Company-owned laptops and mobile devices). In addition, before the Termination Date, you agree to search for and then delete all of the Company’s business information, whether or not confidential, from all of your personal devices, including phones, tablets, computers, and electronic storage devices and cloud storage, other than information that you may need for personal finances and tax filings, or agreements between you and the Company.

Non-Disparagement. You agree that you will not make, publish or communicate, to any entity or person or in any public forum, any defamatory remarks, comments or statements concerning the Company’s products or services, officers or employees. This obligation includes disparagement in any form or forum, including but not limited to any print or electronic media, social networking site, blog, tweet, website, statements to or in the press including any trade press. This Section does not in any way restrict or impede you from exercising protected rights, including rights under the National Labor Relations Act (NLRA) or the federal securities laws, including the Dodd-Frank Act, to the extent that such rights cannot be waived by agreement or from furnishing truthful information in response to a legal subpoena or other legal process or complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. You agree that you will promptly provide written notice of any such valid order of a court of competent jurisdiction to the Chief Legal Officer of McAfee.

Governing Law and Interpretation. This Agreement and the rights and duties of the Parties under it will be governed by and construed in accordance with the laws of the State of Texas. You agree that if any provision in this Agreement is void or held to be unenforceable, the rest of the Agreement will remain valid and enforceable, except that, if the release in Section 3 (or any
14. **Dispute Resolution.**

a. Subject to Section 15(b), you and the Company agree that all claims or disputes arising out of or relating to, or in connection with the construction, meaning, or effect of this Agreement, the Letter Agreement, your employment, your separation from the Company, the Restrictive Covenant Agreements, the Equity Agreements, the Plans, the Termination Release, or the Final Release, shall be submitted to binding resolution in arbitration with the American Arbitration Association ("AAA") before one neutral arbitrator admitted to practice law at least 15 years and who is a former judge. The arbitration shall be administered by the AAA Dallas office. The final arbitration hearing shall take place in the city where you were employed by the Company or any location mutually agreed to by the Parties and shall be administered under the AAA's then-existing Commercial Rules. The arbitration proceeding and all related documents will be confidential, unless disclosure is required by law. The arbitrator’s decision will be final and binding. **ARBITRATION SHALL PROCEED SOLELY ON AN INDIVIDUAL BASIS WITHOUT THE RIGHT FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION OR COLLECTIVE ACTION BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF OTHERS.** The arbitrator’s authority to resolve and make written awards is limited to claims between you and the Company alone. Claims may not be joined, coordinated, or consolidated unless agreed to in writing by all Parties. In the event that any court determines that the foregoing waiver of class or collective actions is unenforceable, any such class or collective proceeding may only proceed in court and not in arbitration. The Parties shall divide the AAA and arbitrator’s fees costs equally. **YOU HEREBY WAIVE YOUR RIGHT TO A TRIAL BY JURY AND AGREE THAT ALL CLAIMS BROUGHT BY YOU WILL BE SUBJECT TO THIS SECTION 15(a).**

b. You understand that damages would not be a sufficient remedy in the event of an actual or threatened breach of Sections 9 through 12 of this Agreement or the Restrictive Covenant Agreements (collectively, the "Restrictive Covenants") and that the Company would be irreparably and immediately harmed if you breach or threaten to breach the Restrictive Covenants. Accordingly, you agree that, as the sole exception to the exclusive and binding arbitration obligation in Section 15(a), the Company, in addition to any other rights or remedies the Company may have, shall be entitled to injunctive relief to restrain any breach or threatened breach of the Restrictive Covenants or to obtain specific enforcement of the Restrictive Covenants, without notice and without payment of bond to the maximum extent permitted by law, and you hereby submit to the exclusive jurisdiction of the state and federal courts in Dallas County, Texas. You waive, to the fullest extent permitted by law, any objection you may now or hereafter have to the laying of the venue of any such proceedings brought in such a court, and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

15. **Miscellaneous.** This Agreement embodies the entire agreement and understanding of the parties hereto with regard to your separation from the Company and any claims you might have against the Company and supersedes any and all prior and/or contemporaneous agreements and understandings, oral or written, between you and the Company regarding such matters; provided, however, that this Agreement does not supersede or waive your surviving obligations to the Company, including those arising under the Equity Agreements, the Plans, and the Restrictive Covenant Agreements. This Agreement shall be interpreted as if the parties jointly prepared it, without any uncertainty or ambiguity being interpreted against any one party. This Agreement may be amended or any provision of it waived only in a writing signed by the parties. The section headings in this Agreement are for convenience of reference only and should not be deemed to affect the interpretation or modify the provisions hereof. This Agreement and the rights, obligations and representations contained herein shall be binding upon and inure to the benefit of the parties and their respective successors, heirs and assigns.
IN WITNESS WHEREOF, the parties have executed this Confidential Separation and General Release Agreement on the latest date set forth below.

MCAFEE, LLC

/s/ Chatelle Lynch 01-06-2020
Chatelle Lynch
SVP & Chief People Officer

JOHN GIAMATTEO

Employee Signature: /s/ John Giamatteo 12-28-2019
Print Name: John Giamatteo
EXHIBIT A

TERMINATION GENERAL RELEASE

This Termination General Release (the "Termination Release") is entered into by and between John Giamatteo ("you" or "your"), on the one hand, and the Company. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Confidential Separation and General Release Agreement (the "Agreement").


a. In consideration of the payments and benefits set forth in the Agreement, including the Separation Pay, you fully release and discharge the Releasees, from any and all claims of any kind whatsoever, known or unknown, which arose on or before the Termination Release Effective Date (defined below), including but not limited to any claim related to your employment with the Company and termination thereof, except those claims that the law does not permit you to waive. The claims you hereby waive include, without limitation, all common law contract, tort, or other claims you might have, as well as all claims you might have under the Civil Rights Act of 1964 (including Title VII of that Act), the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 (ADEA), the Older Workers Benefits Protection Act (OWBPA), the Americans with Disabilities Act of 1990 (ADA), the Family and Medical Leave Act of 1993 (FMLA), the Worker Adjustment and Retraining Notification Act (WARN), the Employee Retirement Income Security Act of 1974 (ERISA), the National Labor Relations Act (NLRA), all of their amendments, the Sarbanes-Oxley Act, or under any applicable state or local laws or ordinances or any other legal restrictions on the Company's rights, including the Texas Commission on Human Rights Act, the Texas Workforce Commission, and any and all other federal, state and local laws, any claims arising out of or relating to the tax treatment of any of the payments you receive pursuant to Section 1 hereof, any claims for attorneys' fees and costs, the Equity Agreements, the Plans, the Letter Agreement, and any claims arising under any other agreements between you and any Releasee.

b. Nothing contained in this Termination Release limits your ability to file a charge or complaint with any government agencies or limits your ability to provide information to or communicate with any government agencies or otherwise participate in any investigation or proceeding that may be conducted by any government agencies in connection with any charge or complaint, whether filed by you, on your behalf, or by any other individual. However, to the maximum extent permitted by law, you agree that if such a charge or complaint is made, you shall not be entitled to recover any individual monetary relief or other individual remedies. This Termination Release does not limit or prohibit your right to receive an award for information provided to any government agency to the extent that such limitation or prohibition is a violation of law.

c. Nothing in this Section 1 shall be deemed to release (i) the right to enforce the terms of the Agreement, or (ii) any claim that cannot be waived under applicable law, including any rights to workers’ compensation or unemployment insurance.

d. You hereby represent and warrant that you are the sole owner of any claims that you may now have or in the past had against the Releasees and that you have not assigned, transferred, or purported to assign or transfer any such claim to any person or entity. You represent that you have suffered no work-related injuries while providing services for the Company and represent you do not intend to file any claim for compensation for work-related injury. You further represent that you have not filed any lawsuits or claims against the Company, or filed any charges or complaints with any agency against any of the Company.

e. You acknowledge that this Section 1 contains a waiver of any rights and claims under the ADEA and the Older Workers Benefit Protection Act. You acknowledge and represent that you have been given at least twenty-one (21) days during which to review and consider the provisions of this Termination Release, or have knowingly and voluntarily waived the right to do so, with the execution of this Termination Release constituting a voluntary waiver. You further acknowledge and represent that you have been advised by the Company that you have the right to revoke this Termination Release for a period of seven (7) days after signing it. You acknowledge and agree that, if you wish to revoke this Release, you must do so in a writing, signed by you and received no later than 5:00 p.m. local time on the seventh (7th) day of the revocation period by Chatelle Lynch, SVP & Chief People Officer, with the original mailed to her at: 5000 Headquarters Blvd., Plano, TX, 75024. If the
last day of the revocation period falls on a Saturday, Sunday or holiday, the last day of the revocation period will be deemed to be the next business day. If no such revocation occurs, the Release shall become effective on the eighth (8th) day following his execution of this Agreement (the “Termination Release Effective Date”). You acknowledge and agree that, if you fail to execute this Termination Release, or revoke this Termination Release pursuant to this Section 1(e), you are not entitled to any Separation Pay as provided by Section 1(b) of the Agreement.

2. **Other Representations, Warranties, and Acknowledgements.** By executing this Termination Release, you acknowledge that you: (i) are not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Termination Release; (ii) have made your own investigation of the facts and are relying solely upon your own knowledge and the advice of your own legal counsel; (iii) knowingly waive any claim that this Termination Release was induced by any misrepresentation or nondisclosure and any right to rescind or avoid this Termination Release based upon presently existing facts, known or unknown; (iv) are entering into this Termination Release freely and voluntarily; (v) have carefully read and understood all of the provisions of this Termination Release; and (vi) have had the opportunity to be represented by the counsel of your choice in connection with the negotiation and execution of this Termination Release. The Parties stipulate that the Company is relying upon these representations and warranties in entering into this Termination Release. These representations and warranties shall survive the execution of this Termination Release.

3. **Return of Property.** You represent that you have returned to the Company any and all items of the Company’s property, including any confidential information.

4. **Ongoing Obligations.** You acknowledge and reaffirm your post-employment obligations pursuant to the Restrictive Covenant Agreements.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, this Termination Release has been duly executed as of the date written below.

JOHN GIAMATTEO

/s/ John Giamatteo
Date: 1-10-2020
EXHIBIT B

FINAL RELEASE

This Final General Release (the “Final Release”) is entered into by and between John Giamatteo (“you” or “your”), on the one hand, and the Company. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Confidential Separation and General Release Agreement (the “Agreement”).

   a. In consideration of the payments and benefits set forth in the Agreement, including the Separation Pay, you fully release and discharge the Releasees, from any and all claims of any kind whatsoever, known or unknown, which arose on or before the Final Release Effective Date (defined below), including but not limited to any claim related to your employment with the Company and termination thereof, except those claims that the law does not permit you to waive. The claims you hereby waive include, without limitation, all common law contract, tort, or other claims you might have, as well as all claims you might have under the Civil Rights Act of 1964 (including Title VII of that Act), the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 (ADEA), the Older Workers Benefits Protection Act (OWBPA), the Americans with Disabilities Act of 1990 (ADA), the Family and Medical Leave Act of 1993 (FMLA), the Worker Adjustment and Retraining Notification Act (WARN), the Employee Retirement Income Security Act of 1974 (ERISA), the National Labor Relations Act (NLRA), all of their amendments, the Sarbanes-Oxley Act, or under any applicable state or local laws or ordinances or any other legal restrictions on the Company’s rights, including the Texas Commission on Human Rights Act, the Texas Workforce Commission, and any and all other federal, state and local laws, any claims arising out of or relating to the tax treatment of any of the payments you receive pursuant to Section 1 hereof, any claims for attorneys’ fees and costs, the Equity Agreements, the Plans, the Letter Agreement, and any claims arising under any other agreements between you and any Releasee.
   b. Nothing contained in this Final Release limits your ability to file a charge or complaint with any government agencies or limits your ability to provide information to or communicate with any government agencies or otherwise participate in any investigation or proceeding that may be conducted by any government agencies in connection with any charge or complaint, whether filed by you, on your behalf, or by any other individual. However, to the maximum extent permitted by law, you agree that if such a charge or complaint is made, you shall not be entitled to recover any individual monetary relief or other individual remedies. This Final Release does not limit or prohibit your right to receive an award for information provided to any government agency to the extent that such limitation or prohibition is a violation of law.
   c. Nothing in this Section 1 shall be deemed to release (i) the right to enforce the terms of the Agreement, or (ii) any claim that cannot be waived under applicable law, including any rights to workers’ compensation or unemployment insurance.
   d. You hereby represent and warrant that you are the sole owner of any claims that you may now have or in the past had against the Releasees and that you have not assigned, transferred, or purported to assign or transfer any such claim to any person or entity. You represent that you have suffered no work-related injuries while providing services for the Company and represent you do not intend to file any claim for compensation for work-related injury. You further represent that you have not filed any lawsuits or claims against the Company, or filed any charges or complaints with any agency against any of the Company.
   e. You acknowledge that this Section 1 contains a waiver of any rights and claims under the ADEA and the Older Workers Benefit Protection Act. You acknowledge and represent that you have been given at least twenty-one (21) days during which to review and consider the provisions of this Final Release, or have knowingly and voluntarily waived the right to do so, with the execution of this Final Release constituting a voluntary waiver. You further acknowledge and represent that you have been advised by the Company that you have the right to revoke this Final Release for a period of seven (7) days after signing it. You acknowledge and agree that, if you wish to revoke this Release, you must do so in a writing, signed by you and received no later than 5:00 p.m. local time on the seventh (7th) day of the revocation period by Chatelle Lynch, SVP & Chief People Officer, with the original mailed to her at: 5000 Headquarters Blvd., Plano, TX, 75024. If the last day of the revocation period
falls on a Saturday, Sunday or holiday, the last day of the revocation period will be deemed to be the next business day. If no such
revocation occurs, the Release shall become effective on the eighth (8th) day following his execution of this Agreement (the “Final
Release Effective Date”). You acknowledge and agree that, if you fail to execute this Final Release, or revoke this Final Release pursuant
to this Section 1(e), you are not entitled to any Separation Pay as provided by Section 1(b) of the Agreement.

2. **Other Representations, Warranties, and Acknowledgements.** By executing this Final Release, you acknowledges that you: (i) are not relying upon
any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Final Release; (ii) have made
your own investigation of the facts and are relying solely upon your own knowledge and the advice of your own legal counsel; (iii) knowingly waive
any claim that this Final Release was induced by any misrepresentation or nondisclosure and any right to rescind or avoid this Final Release based upon
presently existing facts, known or unknown; (iv) are entering into this Final Release freely and voluntarily; (v) have carefully read and understood all of
the provisions of this Final Release; and (vi) have had the opportunity to be represented by the counsel of your choice in connection with the negotiation
and execution of this Final Release. The Parties stipulate that the Company is relying upon these representations and warranties in entering into this
Final Release. These representations and warranties shall survive the execution of this Final Release.

3. **Return of Property.** You represent that you have returned to the Company any and all items of the Company’s property, including any confidential
information.

4. **Ongoing Obligations.** You acknowledge and reaffirm your post-employment obligations pursuant to the Restrictive Covenant Agreements.

[SIGNATURE PAGE FOLLOWS] 11
IN WITNESS WHEREOF, this Agreement has been duly executed as of the date written below.

JOHN GIAMATTEO

Date: ____________________
Christopher D. Young

Dear Mr. Young:

As we have discussed, your employment with McAfee, LLC (the “Company”) and its affiliates has terminated, effective as of February 3, 2020 (the “Separation Date”). The purpose of this letter (this “Agreement”) is to confirm the terms concerning your separation from employment, as follows:

1. Separation from Employment. You acknowledge and agree that as of the Separation Date, your employment with the Company and its affiliates terminated and you were deemed to resign from any and all (i) officer positions you held with the Company or any of its affiliates (as defined below); (ii) memberships you hold on any boards of directors, boards of managers or other governing boards or bodies of the Company or any of its affiliates; and (iii) memberships you hold on any of the committees of any such boards or bodies.

2. Final Salary. You acknowledge that you have received pay for all work you performed for the Company and its affiliates through the Separation Date and all other amounts required to be paid to you under applicable law.

3. Severance Benefits. In consideration of your acceptance of this Agreement and subject to your meeting in full your obligations hereunder, you will be entitled to receive:

   (a) One (1) times the sum of (x) your final base salary ($800,000), plus (y) your target annual bonus ($1,200,000), paid in accordance with the Company’s regular payroll practices in substantially equal payments over the twelve (12)-month period following the Separation Date (the “Severance Period”), beginning on the first payroll date after this Agreement becomes effective (and with the first payment to include all payment that would otherwise have been made prior to such date);

   (b) An amount equal to your 2019 annual bonus, calculated and determined by actual Company performance relative to Company performance objectives during the 2019 fiscal year and assuming individual performance goals are met at 100% of target, payable in a lump sum on the date that bonuses are paid to senior executives generally during the 2020 fiscal year;

   (c) An amount equal to your target 2020 annual bonus, pro-rated to reflect the number of days you worked during the 2020 fiscal year prior to the Separation Date (i.e., $101,639), payable in a lump sum on the date that bonuses are paid to senior executives generally during the 2021 fiscal year; and
(d) Provided that you timely elect COBRA (as defined below) coverage, a taxable subsidy (the “COBRA Subsidy”) to participate in the Company’s medical, dental and vision plans, in an amount, on an after-tax basis, that is equal to the employer-paid premium-equivalent portion for active employees who elect the same type of coverage (e.g., individual only, individual plus family, etc.) through the earlier of the end of the Severance Period and the time at which you become eligible for group health coverage from another employer, with such subsidies payable by the Company on a monthly basis in substantially equal installments not later than the end of the month to which they relate. You are obligated to notify the Company within seven (7) days of learning that you will become eligible for group health coverage from another employer.

4. Acknowledgement of Full Payment and Withholding.

(a) You acknowledge and agree that the payments provided under Section 2 of this Agreement are in complete satisfaction of any and all compensation due to you from the Company and its affiliates, whether for services provided to the Company or its affiliates or otherwise, through the Separation Date and that, except as expressly provided under this Agreement, no further compensation is owed or will be paid to you.

(b) All payments made by the Company under this Agreement shall be reduced by any tax and other amounts required to be withheld by the Company under applicable law and all other lawful deductions authorized by you.


(a) Except for any right you may have to continue your participation and that of your eligible dependents in the Company’s medical plans under the federal law known as “COBRA”, your active participation in all employee benefit plans of the Company and its affiliates shall end in accordance with the terms of those plans. The vested balance of your account under the McAfee Nonqualified Deferred Compensation Plan will be paid to you in accordance with the terms of such plan. You will not continue to earn paid time off or other similar benefits after the Separation Date. You will receive information about your COBRA continuation rights under separate cover.

(b) Within four (4) weeks following the Separation Date, you must submit your final expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement, and, in accordance with Company policy, shall provide reasonable substantiation and documentation for the same. The Company will reimburse you for your authorized and documented expenses within thirty (30) days of receiving such statement pursuant to its regular business practice.
6. Equity.

(a) You acknowledge and agree that as of immediately prior to the Separation Date you held the number of vested and unvested Class A Units of Parent (as defined below) and Management Incentive Units of Parent ("MIUs"), in each case, that are set forth on Exhibit A to this Agreement, that were granted to you under Parent’s 2017 Management Incentive Plan (the "Plan") and award agreements thereunder (the "Award Agreements") or that were purchased by you pursuant to those Class A Unit Subscription Agreements, dated June 1, 2017 and September 16, 2017, respectively, between you and Parent (the "Subscription Agreements," and collectively with the Plan, the Award Agreements, and Parent’s Limited Liability Company Agreement dated as of April 3, 2017, in each case, as amended from time to time, the "Equity Documents"). Other than the Class A Units and MIUs set forth on Exhibit A, you acknowledge and agree that you do not directly or indirectly hold any equity or equity-based awards in Parent or any of its affiliates. Subject to your execution (and non-revocation) of this Agreement and subject to your meeting in full your obligations hereunder, the 113,750 unvested MIUs that are subject to time-based vesting and that are ordinarily scheduled to vest (without regard to your termination of employment) on or before December 31, 2020 and 227,500 unvested MIUs that are eligible to vest if the TPG Investor receives a TPG Return equal to [ ] times the Investment Amount (as such terms are defined in the applicable Award Agreement) will remain outstanding following the Separation Date and will vest in full on the date that is six (6) months following the Separation Date (or, if earlier, upon a Change in Control (as defined in the Plan)), and all accrued distribution amounts with respect to such unvested MIUs ($1,162,027, plus the distributable share attributable to such MIUs of any distribution made after the date hereof) shall be paid within thirty (30) days following such vesting date. The MIUs that become vested following the Separation Date in accordance with this Section 6(a) shall be referred to herein as the “Accelerated MIUs”. Except as provided in the preceding sentence, all MIUs that were unvested as of the Separation Date were forfeited in accordance with their terms for no consideration due or payable to you as of the Separation Date.

(b) All vested Class A Units and Management Incentive Units of Parent held by you (including the Accelerated MIUs) will remain subject to the terms of the applicable Equity Documents, except as otherwise expressly provided herein. In addition, you agree that the following provisions shall apply in the event of the consummation of the initial public offering of shares of stock of the Company or any present or future affiliate thereof (together with any related reorganization transaction(s), the “IPO” and such publicly-traded company, “Pubco”):

(i) Class A Units and MIUs held by you and your permitted transferees may be converted into shares of Pubco stock on terms determined by the Parent’s Board of Managers or the compensation committee thereof (the “Parent Board”), in its good faith discretion, based on the value of the Class A Units and MIUs they replace as of immediately prior to conversion (and to the extent any MIUs that shall remain outstanding and unvested at such time in accordance with Section 6(a) above, subject to the same vesting terms as applied to such MIUs immediately prior to the conversion);

(ii) any Pubco stock may be subjected to a post-IPO lock-up restriction if requested by the underwriters and may be subject to such other transfer restrictions, which shall not apply for longer than one (1) year, following the consummation of the IPO, as the Parent Board determines in good faith is appropriate to avoid material market disruption, taking into account the size your remaining equity holdings, the public company’s public float and average trading volumes, applicable securities law restrictions and disclosure requirements; and
in the event you are eligible for benefits under any tax receivable agreement entered in connection with the IPO, the Parent Board may elect to pay you the net present value (as determined in good faith by the Parent Board) of any payments that would otherwise be payable to you under such tax receivable agreement.

(c) You agree to sell, and Parent agrees to purchase, your Accelerated MIUs and your vested Class A Units and MIUs set forth on Exhibit A. As illustrated on Exhibit B hereto, you and Parent agree that Class A Units and MIUs having an aggregate repurchase price of $10 million (less the value of any non-tax distributions made after the date hereof but prior to the repurchase date and after taking into account appropriate adjustments for any tax distributions relative to pro rata ownership made prior to the repurchase date) shall be repurchased by Parent on the sixtieth (60th) day following the Separation Date (the “First Repurchase Date”) and the Accelerated MIUs and the remainder of your Class A Units and other MIUs shall be repurchased on the sixtieth (60th) day after the first anniversary of the Separation Date (the “Second Repurchase Date”). The purchase price for such Accelerated MIUs, Class A Units and other MIUs will be equal to (i) $34.57 per Class A Unit and per MIU for the repurchase made on the First Repurchase Date and (ii) the aggregate fair market value of the Accelerated MIUs, Class A Units and other MIUs repurchased on the Second Repurchase Date, in any case under clause (i) or (ii), (x) taking into account any previous tax distributions relative to pro rata ownership received by you in respect of such Accelerated MIUs, Class A Units and other MIUs that, as of the applicable repurchase date, have not otherwise been appropriately taken into account when calculating prior non-tax distributions and (y) less any non-tax distributions in respect of your units between the date hereof (in the case of the first repurchase) or the date of the applicable valuation (in the case of the second repurchase) and the applicable repurchase date, as determined in good faith by the Parent Board on a basis consistent with other actions relating to its management equity program, provided that you retain your appraisal rights with respect to such valuation(s) pursuant to Section 2.5(e) of the Employment Agreement (as defined below). The purchase price for such Accelerated MIUs, Class A Units and other MIUs shall be paid in cash on the applicable repurchase date specified above, unless payment in cash would violate applicable law or the Parent Board determines in good faith that doing so would reduce available baskets under the Company’s credit agreement (in effect as of the First Repurchase Date, Second Repurchase Date, or any subsequent repurchase date, as applicable) below 50% of their aggregate annual limits (the “Credit Agreement Limitations”), in which case, to the extent a repurchase in cash on the otherwise applicable repurchase date would require a payment in excess of such threshold, the portion of the repurchase price in excess of such threshold shall instead be paid on or within sixty (60) days following on the first possible date(s) that such Credit Agreement Limitation no longer applies. In the event of an IPO prior to any such repurchase, this Section 6(c) shall cease to apply.

7. Continuing Obligations In exchange for the compensation and benefits provided to you under this Agreement to which you would not otherwise be entitled, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you acknowledge and agree that the following restrictions on your activities...
during and after your employment with the Company and/or any of its affiliates (collectively, the “Continuing Obligations”) are reasonable and necessary to protect the legitimate interests of the Company. You agree that the following restrictions on your activities after your employment are necessary to protect the good will, confidential information, trade secrets and other legitimate interests of the Parent and its subsidiaries (together with Parent, and each individually a member of, the “Company Group”):

(a) Non-Competition; Non-Solicitation. You agree that for the twelve (12)-month period following the Separation Date (the “Restricted Period”) you shall not directly or indirectly, with or without consideration, (i) become an employee, director, or independent contractor, stockholder or other owner (other than as (a) a holder of less than 1% of any class of securities of any company (whether public or private) or (b) a holder of a passive equity interest in a private debt or equity investment fund in which you do not have the ability to control or exercise any managerial influence over such fund) of, or a consultant to, or perform any services for, any Person that engages in security solutions related to computers, mobile devices and networks or any other business the Company Group is engaged in, or has made an investment decision to engage in as of the Separation Date (a “Competing Business”); (ii) on behalf of a Competing Business, solicit or engage or attempt to solicit or engage, as applicable, any current customer or supplier of the Company Group, or prospective customer or supplier that the Company Group has expended material resources to engage or procure during the twelve (12)-month period prior to the Separation Date, or to terminate or alter in a manner adverse to the Company Group such current or prospective customer’s or supplier’s relationship with the Company Group; or (iii) hire, solicit or attempt to solicit, as applicable, any Company Group employee, any natural person serving as an independent contractor (or any entity independent contractor controlled by a natural person providing services to the Company Group) (an “Independent Contractor”) or individual who was a Company Group employee or Independent Contractor within the six (6)-month period immediately prior thereto to terminate or otherwise alter his, her or its employment or other service relationship with the Company Group. Notwithstanding the foregoing, nothing in this Agreement shall prevent you from (a) providing services to a venture capital investment fund, as long as you do not serve as a member of the board of directors of, or otherwise directly or indirectly provide services to or for the benefit of, any portfolio company that is engaged, in whole or in part, in a Competing Business or (b) rendering services to a separate business unit of a Person that is engaged in a Competing Business, as long as such business unit is not engaged in and does not provide support to the Competing Business, such Competing Business could reasonably be expected to account for less than 10% of such Person’s annual revenues and you have no participation in the Competing Business. For purposes of this Agreement, “Person” shall mean any individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof. For the sake of clarity, the Company acknowledges and agrees that the terms of that certain Senior Advisor Agreement between you and TPG Global, LLC, dated on or around February 3, 2020 (the “Advisor Agreement”), shall not extend the Restricted Period nor shall they expand, supplement or otherwise amend the scope of the restrictive covenants set forth in this in this Section 7. In the event of a conflict or inconsistency between the terms of this Agreement and the Advisor Agreement, the terms of this Agreement shall be controlling.
(b) **Confidential Information.** You acknowledge and agree that all information regarding Company Group or the activity of the Company Group that is not generally known to persons not employed or retained (as employees or as independent contractors or agents) by the Company Group, including, without limitation, information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company Group (the "Confidential Information") is established at great expense and protected as confidential information and provides the Company Group with a substantial competitive advantage in conducting its business. You further acknowledge and agree that by virtue of your employment with the Company Group, you had access to, and were entrusted with Confidential Information, and that the Company Group could suffer great loss and injury if you would disclose this information or use it in a manner not specifically authorized by the Company. Therefore, you agree that following the Separation Date, you will not, directly or indirectly, either individually or as an employee agent, partner, shareholder, owner, trustee, beneficiary, co-venturer distributor, consultant or in any other capacity, use or disclose or cause to be used or disclosed any Confidential Information, unless and to the extent that any such information becomes generally known to and available for use by the public other than as a result of your own acts or omissions. You shall deliver to the Company at the Separation Date, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information, or the business of the Company Group which you may then possess or have under your control. In addition, you agree that, notwithstanding the foregoing, to the extent you are compelled to disclose Confidential Information by lawful service of process, subpoena, court order, or otherwise compelled to do by law, you shall, to the extent legally permitted, provide the Company with a copy of the document(s) seeking disclosures of such information promptly upon receipt of such document(s) and prior to your disclosure of any such information, so that the Company may take such action as it deems to be necessary or appropriate in relation to such subpoena or request and you may not disclose any such information until the Company has had the opportunity to take such action. Nothing in this Agreement limits, restricts or in any other way affects your communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires you to provide the Company with notice of the same. You understand that you cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, you may be held liable if you unlawfully access trade secrets by unauthorized means.

(c) **Reasonable Limitation and Severability; Injunctive Relief.** You agree that the above restrictions are (i) reasonable given your role with the Company, and are necessary to protect the interests of the Company Group and (ii) completely severable and independent agreements supported by good and valuable consideration and, as such, shall survive the termination of this Agreement for any reason whatsoever. The parties further agree that any invalidity or unenforceability of any one or more of such restrictions on
competition shall not render invalid or unenforceable any remaining restrictions on competition. Additionally, should a court of competent jurisdiction determine that the scope of any provision of this Section 7 is too broad to be enforced as written, the parties hereby authorize the court to reform the provision to such narrower scope as it determines to be reasonable and enforceable and the parties intend that the affected provision be enforced as so amended. You acknowledge and agree that the Company’s remedies at law for a breach or threatened breach could be inadequate and the Company could suffer significant harm and irreparable damages as a result of a breach or threatened breach. In recognition of this fact, you agree that, in the event of such a breach or threatened breach, in addition to any remedies at law, the Company, without posting any bond, shall be entitled to cease making any payments or providing any benefit otherwise required by this Agreement (other than pursuant to Section 2 and the second sentence of Section 5(a)), cause any vested or unvested MIUs (as well as related distribution holdback amounts) and/or other distributions which you may be entitled to be forfeited, not consummate any agreed equity repurchase, recover any such amounts that were previously paid to you or paid to you in respect of such vested equity (including related distribution holdback amounts) and/or obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available. The remedies under this Agreement are without prejudice to the Company’s right to seek any other remedy to which it may be entitled at law or in equity.

(d) Other Remedies. Notwithstanding the forgoing or any other agreement or arrangement with the Company Group, if the Parent Board determines in good faith in the course of any governmental or internal investigation, regulatory matter, legal proceeding or similar matter relating to the Company Group, based on information that was not known to the Parent Board or the Company’s General Counsel, each having been generally updated in good faith on internal investigations, as of the date hereof, that you committed any act of material misconduct (or unreasonably failed to act as to a material issue that you had or should have had knowledge of), in either case, in a manner that is, was or is reasonably expected to be materially and demonstrably harmful to the Company Group, or its business (collectively, “Investigation Developments”), the Company may immediately stop making any payments or providing any benefit otherwise required by this Agreement (other than pursuant to Section 2 and the second sentence of Section 5(a)) and cause any vested or unvested MIUs (as well as related distribution holdback amounts) and/or other distributions to which you may be entitled pursuant to MIUs to be forfeited, and will not be required to consummate any agreed equity repurchase and may recover (and if so determined, you must reimburse) any such amounts that were previously paid to you or paid to you in respect of such vested MIUs (including related distribution holdback amounts); provided that the aggregate amount of such forfeitures and recoveries shall be limited to the amount of any losses or other damages suffered or incurred by the Company Group as a result of your actions or inaction, as reasonably determined by the Company in good faith. Further, notwithstanding the foregoing or any other arrangement with the Company Group, if within eighteen (18) months following the Separation Date the Parent Board in good faith determines that the Company Group must prepare an accounting restatement due to the material noncompliance of the Company, as a result of your material misconduct, with applicable financial reporting requirements, you must reimburse the Company for any bonuses or incentive-based or equity-based compensation (including amounts received in
respect thereof and profits from the sale of any equity-based compensation), including any bonus or incentive-based or equity-based compensation paid, provided or accelerated pursuant to Sections 3, 5 or 6 of this Agreement or otherwise, you received during the period beginning twelve (12) months prior to the Separation Date and ending fifteen (15) months after the Separation Date; provided that prior to the Parent Board requiring any reimbursement described in this sentence you, along with your legal counsel (should you so elect), will be given a reasonable opportunity to present relevant information to the Parent Board.

8. Return of Company Documents and Other Property. In signing this Agreement, you represent and warrant that you have used your best efforts to return to the Company or to destroy or delete any and all documents, materials and information (whether in hardcopy, on electronic media or otherwise) related to the business of the Company Group (whether present or otherwise), and all keys, access cards, credit cards, computer hardware and software, telephones and telephone-related equipment and all other property of the Company Group in your possession or control, provided that you are entitled to keep personal copies of (i) your compensation records, (ii) materials distributed to equityholders generally and (iii) any written agreement to which you are a party. Further, you represent and warrant that you have not otherwise retained any copy or derivation of any documents, materials or information (whether in hardcopy, on electronic media or otherwise) of the Company Group. Further, you acknowledge that to the best of your knowledge you have disclosed to the Company all passwords necessary to enable the Company to access all information which you have password-protected on any computer equipment, network or system of the Company or any of its affiliates.

9. Cooperation. At the reasonable request of the Company and subject to your reasonable availability and other business obligations, you agree to cooperate as reasonably necessary with the Company Group for six (6) months following the Separation Date on all matters relating to the winding up of your pending work on behalf of the Company including, but not limited to, any litigation in which the Company Group is involved and the orderly transfer of any such pending work to other employees of the Company as may be designated by the Company or Parent. In addition, at all times after the Separation Date, subject to your reasonable availability, taking into account your other reasonable business obligations, you will fully and truthfully cooperate on any governmental or internal investigations, regulatory matters, legal proceedings or similar matters relating to the Company. Notwithstanding anything herein to the contrary, the preceding cooperation covenant shall not apply to any matter that arises out of or relates to a dispute between you and (i) any member(s) of the Company Group; (ii) any and all parent companies, subsidiaries (direct and indirect), affiliates, successor and assigns of the Company Group; and/or (iii) any of the foregoing entities’ directors, officers, employees, agents, attorneys, advisors, insurers, representatives, and benefit plans (including all such plans’ insurers, fiduciaries, administrators, and the like), in each case, only if complying with such cooperation covenant would adversely affect your legal rights in any such dispute in any material respect.

(a) In exchange for the severance pay, acceleration of vested equity (and related distribution holdbacks) and other benefits provided to you under this Agreement, as well as the repurchase provisions set forth in Section 6(c), to which you would not otherwise be entitled, on your own behalf and on the behalf of your heirs, executors, administrators, beneficiaries, representatives and assigns, and all others connected with or claiming through you, hereby release and forever discharge the Company, Parent and their current and past parents, subsidiaries and other affiliates and all of their respective past, present and future officers, directors, trustees, shareholders, employees, agents, employee benefit plans, general and limited partners, members, managers, investors, joint venturers, representatives, successors and assigns, and all others connected with any of them, only to the extent such parties were acting in their official capacities (collectively, the “Released Parties”), from any and all causes of action, rights and claims of any type or description, known or unknown, which you have had in the past, now have, or might now have, through the date of you signing of this Agreement, in any way related to, connected with or arising out of your employment or its termination or the Employment Agreement by and among you, McAfee Employee Holdings, LLC and Foundation Technology Worldwide LLC (“Parent”) dated as of June 1, 2017 (the “Employment Agreement”) or pursuant to any federal, state or local law, regulation or other requirement (including without limitation Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or the fair employment practices statute of the state or states in which you were previously employed by the Company or otherwise had a relationship with the Company or any of its subsidiaries or other affiliates, each as amended from time to time) (collectively, the “Released Claims”). The foregoing release shall not apply to (a) any claim that arises after you sign this Agreement, (b) any rights to indemnification that you may have under the Company’s Articles of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company or its predecessor or affiliate entities may have to indemnify you or hold you harmless, (c) any claim that may not be waived pursuant to applicable law, (d) your rights to severance pay and benefits under this Agreement, (e) your rights following the date hereof with respect to any equity interests you hold in Parent or any of its affiliates as set forth in this Agreement, (f) your right to enforce the terms of this Agreement or (g) your rights to any vested benefits to which you are entitled under the terms of any of the Company’s or its affiliates’ benefit plans, programs, or policies.

In signing this Agreement, to the extent applicable, you expressly waive and relinquish all rights and benefits provided by Section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance of such specific waiver of Section 1542, which section states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or the released party.
Therefore, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, you expressly acknowledge that the general release and waiver of claims set forth in this Section 10(a) is intended to include in its effect, without limitation, all Claims which you do not know or suspect to exist in your favor at the time you sign it, and that this Agreement contemplates the extinguishment of any and all such Claims.

(b) Nothing contained in this Agreement shall be construed to prohibit you from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency, provided, however, that you hereby agree to waive your right to recover monetary damages or other individual relief in any charge, investigation, proceeding, complaint or lawsuit filed by you or by anyone else on your behalf. Nothing in this Agreement is intended to limit, restrict or in any other way affect your communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity.

(c) This Agreement, including the general release of claims set forth in Section 10(a), creates legally binding obligations and the Company and its affiliates therefore advise you to consult an attorney before signing this Agreement. In signing this Agreement, you give the Company and its affiliates assurance that you have signed it voluntarily and with a full understanding of its terms; that you have had sufficient opportunity of not less than twenty-one (21) days, before signing this Agreement, to consider its terms and to consult with an attorney, if you wished to do so, or to consult with any other of person, and that, in signing this Agreement, you have not relied on any promises or representations, express or implied, that are not set forth expressly in this Agreement.


(a) The Company hereby and forever releases you from any and all claims, except as set forth below, arising out of or relating to the your employment or other relationship with the Company and the conclusion of that employment or other relationship that the Company may possess against you arising from any omissions, acts, facts, or damages that have occurred up until and including the date of execution of this Agreement. Notwithstanding anything to the contrary herein, this release of claims shall not apply to any claim (a) that arises after the execution of this Agreement, (b) related to your intentional or grossly negligent act or omissions or (c) related to Investigation Developments.

(b) In signing this release of claims, to the extent applicable, the Company expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance of such specific waiver of Section 1542, which Section states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge (subject to the exceptions noted above), the Company expressly acknowledges that this release of claims is intended to include in its effect, without limitation, all released claims (subject to the exceptions noted above) which the Company does not know or suspect to exist in its favor at the time of execution of this Agreement, and that this release of claims contemplates the extinguishment of such released claims.

12. Miscellaneous.

(a) This Agreement constitutes the entire agreement between you and the Company and supersedes all prior and contemporaneous communications, agreements and understandings, whether written or oral, with respect to your employment, its termination and all related matters, excluding only your and the Company Group’s obligations under the Equity Documents that survive your termination of employment, the provisions of which shall remain in full force and effect in accordance with their terms.

(b) This Agreement may not be modified or amended, and no breach shall be deemed to be waived, unless agreed to in writing by you and the Company or its expressly authorized designee. The captions and headings in this Agreement are for convenience only, and in no way define or describe the scope or content of any provision of this Agreement.

(c) The obligation of the Company to make payments or provide benefits to you or on your behalf under this Agreement, and your right to retain the same, is expressly conditioned upon your continued full performance of your obligations under this Agreement, and under the Equity Documents.

(d) For purposes of any payment or benefit provided under this Agreement that is conditioned on your meeting your obligations under this Agreement and/or the Equity Documents, as applicable, you will not be considered to be in breach of, or deficient in meeting your obligations under, this Agreement or the Equity Documents, unless the Company has (i) provided you with written notice of such deficiency or breach, and (ii) a reasonable period to cure such deficiency or breach. In the event you fail to cure such deficiency or breach, you will be deemed in breach of, or deficient in meeting your obligations under, this Agreement. Notwithstanding the foregoing, the Company will not be required to provide more than one notice and opportunity to cure with respect to repeated or substantially similar circumstances.

(e) Not later than ten (10) business days following the date that this Agreement becomes effective, the Company shall pay or reimburse you for any and all reasonable attorneys’ fees and related costs paid in connection with the negotiation and execution of this Agreement, up to a maximum amount of $15,000.

(f) All amounts payable under the Agreement are intended to comply with, or be exempt from, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and will be construed and administered accordingly. The payments made pursuant to this Agreement are also intended to be exempt from Section 409A to the
maximum extent possible, under either the separation pay exemption pursuant to Treasury regulation §1.409A-1(b)(9)(iii) or as short-term deferrals pursuant to Treasury regulation §1.409A-1(b)(4), and each amount to be paid or benefit to be provided to you pursuant to this Agreement, shall be construed as a separate payment for purposes of Section 409A. Notwithstanding anything herein to the contrary, to the extent any payments made or contemplated hereunder constitute nonqualified deferred compensation, within the meaning of Section 409A if you are a “specified employee” as defined in Section 409A as of the Separation Date and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to you) until the date that is six (6) months and one (1) day following Separation Date (or the earliest date as is permitted under Section 409A). To the extent required to avoid an accelerated or additional tax under Section 409A, amounts reimbursable to you under this Agreement shall be paid to you on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in-kind benefits provided to you) during any one year may not affect amounts reimbursable or provided in any subsequent year and may not be liquidated or exchanged for any other benefit. In no event shall the Company Group have any liability relating to the failure or alleged failure of any payment or benefit under this Agreement to comply with, or be exempt from, the requirements of Section 409A.

(g) To the extent not preempted by federal law, the validity and effect of this Agreement and the rights and obligations of the parties hereto shall be construed and determined in accordance with the law of Delaware, without regard to any conflict of law provisions thereof. The parties irrevocably consent to the jurisdiction of, and venue in, the state and federal courts in the State of Delaware, with respect to any matters pertaining to, or arising from, this Agreement. By signing this Agreement, you acknowledge and agree that you have been individually represented by legal counsel in negotiating the terms of this Agreement (including without limitation as to all restrictive covenants contained herein, the remedies for breaches of such covenants, and the governing law and forum that will apply in the event of any disputes related to such restrictive covenants).
If the terms of this Agreement are acceptable to you, please sign, date and return it to me within twenty-one (21) days of the date you receive it. You may revoke this Agreement at any time during the seven (7)-day period immediately following the date of your signing by notifying the Company’s General Counsel in writing of your revocation within that period. If you do not revoke this Agreement, then, on the eighth (8th) day following the date that you signed it, this Agreement shall take effect as a legally binding agreement between you and the Company on the basis set forth above. The enclosed copy of this letter, which you should also sign and date, is for your records.

Sincerely,

MCAFEE, LLC

By: /s/ Tim Millikin
Name: Tim Millikin
Title: Authorized Signatory

FOUNDATION TECHNOLOGY WORLDWIDE LLC

By: /s/ Tim Millikin
Name: Tim Millikin
Title: Member, Board of Managers

Accepted and agreed:

Signature: /s/ Christopher D. Young
Christopher D. Young

Date: February 2, 2020
Re: Severance

This letter agreement (this “Agreement”) sets forth the terms and conditions pursuant to which McAfee Corp., a Delaware corporation (the “Company”), will provide you with severance benefits if your employment with the Company, Foundation Technology Worldwide, a Delaware limited liability company (“FTW”) and their respective subsidiaries (your “Employment”) is terminated in a Qualifying Termination (as such terms are defined below). This Agreement will be effective as of immediately prior to the consummation of the initial public offering of shares of the Company’s Class A common stock (the time this Agreement becomes effective, the “Effective Time”). Notwithstanding the foregoing, if the Effective Time does not occur on or before March 31, 2021, this Agreement shall be null and void and of no force or effect. Following the Effective Time, the severance payments and benefits described in this Agreement will be the only severance payments or benefits that you will be entitled to in connection with a termination of your Employment, and you will not be entitled to any severance payments or benefits under the terms of any other agreement with the Company or any of its Affiliates or any plan, policy or program of the Company or any of its Affiliates, except as specifically provided herein.

1. Severance and Change in Control Payments and Benefits.

(a) Non-Change in Control Severance. If your Employment is terminated in a Non-Change in Control Qualifying Termination, then, subject to terms and conditions of this Agreement, the Company will provide you with the following severance payments and benefits:

   i. the Accrued Benefits;

   ii. an amount equal to one (1) times your annual base salary and target annual bonus, in each case, as in effect on the Separation Date (or, if higher, the base salary and target annual bonus in effect immediately prior to any reduction in such amounts which resulted in “Good Reason”) (the “Severance Payment”); and

   iii. provided that you timely and properly elect to purchase continued healthcare coverage under COBRA, direct payment to its COBRA provider on your behalf of a monthly amount equal to the employer portion of the monthly premiums paid under the Company’s group health plans as of the Separation Date, for the period ending on the earlier of (i) the date that is twelve (12) months following the Separation Date, and (ii) the date on which you become eligible to be covered under another employer’s health plan (of which you will provide prompt notice to the Company) (the “COBRA Payment”).

The Accrued Benefits will be payable in a lump sum on or as soon as practicable following the Separation Date (or, with respect to the amounts payable under clause (ii) of the definition of Accrued Benefits, in accordance with the terms of the applicable bonus), but, in all cases, within the time period required by applicable law. The Severance Payment and COBRA Payment (to the
extent payable as described above) will be paid in substantially equal installments over a period of twelve (12) months following the Separation Date in accordance with the Company’s regular payroll practices, beginning on the Company’s first regular payroll date following the date that the Release (as defined below) becomes fully effective and irrevocable (and the first installment will include all amounts that would have been paid on the regular payroll dates of the Company following the Separation Date prior to such date), except as described in Section 6 below. Notwithstanding the foregoing, to the extent any severance payments or benefits that you were entitled to receive under the Prior Agreement were subject to Section 409A, the Severance Payment and COBRA Payment shall be paid on the schedule set forth in the Prior Agreement to the extent required to prevent any accelerated or additional tax under Section 409A. To the extent payable, the COBRA Payment will be paid directly by the Company or one of its Affiliates on your behalf or reimbursed to you in accordance with applicable policies of the Company and its Affiliates regarding substantiation of reimbursable expenses; provided that with respect to any group health plan to which Section 105(h) of the Code or any similar provision applies, the value of such payments may be provided in a manner that is intended to avoid adverse tax consequences to you, the Company or its Affiliates.

(b) Change in Control Equity Treatment. Notwithstanding anything to the contrary in the documents governing your Time-Based Equity, in the event your then unvested Time-Based Equity awards are not continued, assumed or substituted for in connection with a Change in Control with awards or rights having the same intrinsic value (determined as of the Change in Control), such Time-Based Equity awards shall vest in full effective as of the Change in Control. For the avoidance of doubt, all equity awards other than the Time-Based Equity shall be treated in accordance with the terms of the applicable equity plan and other documents governing such awards.

(c) Change in Control Severance. If your Employment is terminated in a Change in Control Qualifying Termination, then, in lieu of the payments described in Section 1(a) above and subject to terms and conditions of this Agreement, the Company will provide you with the following benefits:

i. the Accrued Benefits;

ii. an amount equal to one and one-half (1.5) times your annual base salary and target annual bonus, in each case, at the highest level in effect during the 12-month period leading up to the Separation Date (the “Change in Control Severance Payment”);

iii. a pro rata portion (prorated based on the percentage of the fiscal year that shall have elapsed through the Separation Date) of your annual bonus earned based on actual performance for the year in which your Employment terminates (the “Pro Rata Bonus”);

iv. provided that you timely and properly elect to purchase continued healthcare coverage under COBRA, direct payment to its COBRA provider on your behalf of a monthly amount equal to the employer portion of the monthly premiums paid under the Company’s group health plans as of the Separation Date, for the period ending on the earliest of (i) the date that is eighteen (18) months following the Separation Date, and (ii) the date on which you become covered under another employer’s health plan (the “CIC COBRA Payment”); and
v. all unvested Time-Based Equity held by you as of the Separation Date shall vest in full as of the Separation Date and all Performance-Based Equity held by you as of the Separation Date shall vest as of the Separation Date based on target performance or, if higher and if determinable, based on the actual performance of the Company through the Separation Date, as determined in accordance with the applicable documents governing such Performance-Based Equity (the “Change in Control Equity Acceleration”).

The Accrued Benefits will be payable in a lump sum as soon as practicable following the Separation Date (or, with respect to the amounts payable under clause (ii) of the definition of Accrued Benefits, in accordance with the terms of the applicable bonus), but in any case within the time period required by applicable law. The Change in Control Severance Payment will be paid in a lump sum on the Company’s first regular payroll date following the date that the Release becomes fully effective and irrevocable, except as described in Section 6 below, but in no event will be paid later than two and a half months following the fiscal year in which the Separation Date occurs. Notwithstanding the foregoing, to the extent any severance payments or benefits that you were entitled to receive under the Prior Agreement were subject to Section 409A, the Change in Control Severance Payment shall be paid on the schedule set forth in the Prior Agreement to the extent required to prevent any accelerated or additional tax under Section 409A. To the extent payable, the CIC COBRA Payment will be paid directly by the Company or one of its Affiliates on your behalf or reimbursed to you in accordance with applicable policies of the Company and its Affiliates regarding substantiation of reimbursable expenses; provided that with respect to any group health plan to which Section 105(h) of the Code or any similar provision applies, the value of such payments may be provided in a manner that is intended to avoid adverse tax consequences to you, the Company or its Affiliates.

The Pro Rata Bonus shall be paid in the fiscal year of the Company that follows the fiscal year in which in the Qualifying Termination occurs, at the time at which annual bonuses are payable to senior executives of the Company and its Affiliates generally, but in no event later than two and a half months following the fiscal year in which the Qualifying Termination occurs.

The Change in Control Equity Acceleration shall occur effective on the Separation Date, but any shares or other equity delivered in settlement of such awards shall not be delivered until a date following the date the Release becomes fully effective and irrevocable (but in no event later than two and a half months following the fiscal year in which the Separation Date occurs or such other time as the Company in good faith determines would not result in additional taxes becoming due under Section 409A) and will be forfeited for no consideration in the event the Release does not become so fully effective and irrevocable by the deadline specified in Section 2 of this Agreement.

(d) Certain Definitions. For purposes of this Agreement, the following terms shall have the following meanings:
i. “Accrued Benefits” means the (i) the earned but unpaid portion of your base salary through the Separation Date, (ii) any annual cash bonus that relates to a completed fiscal year or performance period, as applicable, and has been earned based on performance for such completed fiscal year or performance period (but is not yet paid) on or before the Separation Date, which shall be paid in accordance with the terms of such bonus, (iii) a lump-sum payment in respect of any accrued but unused vacation days payable to you under the Company's vacation policies, (iv) any unpaid expense or other reimbursements due to you under the Company’s expense reimbursement policies, and (v) any other amounts or benefits required to be paid or provided by law or under any plan, program, policy or practice of the Company or any of its Affiliates (excluding, for the avoidance of doubt, any amounts or benefits payable under any severance or similar plan, program, policy or practice maintained by the Company or any of its Affiliates).

ii. “Affiliate” means any entity that, directly or indirectly, is controlled by, controls or is under common control with the Company and/or any entity in which the Company has a significant equity interest, in either case, as determined by the Board of Directors of the Company, including, for the avoidance of doubt, Foundation Technology Worldwide, LLC, McAfee, LLC and their respective subsidiaries.

iii. “Cause” means any of the following, as determined by the Administrator, (i) gross negligence or willful misconduct in connection with the performance of duties with respect to (A) your Employment or (B) your duties under any employment or similar agreement (including an offer letter) with the Company or any of its Affiliates; (ii) your commission of (or pleading guilty or pleading no contest or nolo contendere to) a felony or other crime involving moral turpitude (where moral turpitude means so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community); (iii) the performance by you of any act or acts of fraud or material dishonesty in connection with or relating to the business of the Company or any of its Affiliates or the misappropriation (or attempted misappropriation) of any of the funds or property of the Company or any of its Affiliates; (iv) breach of any Restrictive Covenant relating to non-competition, non-solicitation or no hiring or material breach of any other Restrictive Covenant applicable to you in favor of the Company or any of its Affiliates; or (v) a material violation of the material written policies or procedures of the Company or of any of its Affiliates (with it being understood that any violation of a policy regarding sexual harassment, sexual misconduct, or any form of discrimination shall be considered a material violation of a written policy). Notwithstanding the foregoing, if you are party to an individual employment, severance-benefit, change-in-control or similar agreement (including an offer letter) with the Company or any of its Affiliates that contains a definition of “Cause” (or a correlative term), such definition will apply in lieu of the definition set forth above during the term of such agreement.

iv. “Change in Control” shall mean any of the following events or series of related events after the date hereof: (i) any person, or group of persons acting together which would constitute a “group” for purposes of Section 13(d) of the Exchange Act, or any successor provisions thereto, is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then-outstanding voting securities (other than a group formed pursuant to the Stockholders Agreement, dated as of [____] (as amended from time to time, the "Stockholders Agreement"); (ii) there is consummated a merger, consolidation or similar business transaction involving the Company with any other person or persons, and, either
(x) the Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a subsidiary, the ultimate parent thereof, or (y) immediately after the consummation of such transaction, the voting securities of the Company immediately prior to such transaction do not continue to represent or are not converted into more than 50% of the combined voting power of the then-outstanding voting securities of the person resulting from such transaction or, if the surviving company is a subsidiary, the ultimate parent thereof; or (iii) there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Company of all or substantially all of the Company’s assets (including a sale of assets of FTW), other than such sale or other disposition by the Company of all or substantially all of the Company’s assets to an entity at least 50 percent (50%) of the combined voting power of the voting securities of which are owned by shareholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale. Notwithstanding the foregoing, a “Change in Control” shall not be deemed to have occurred (x) by virtue of the consummation of any transaction or series of integrated transactions immediately following which the ultimate beneficial owners of the Class A Common Stock and Class B Common Stock of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares or equity of, an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions or (y) by virtue of the consummation of any transaction or series of transactions, immediately following which, the Company and one or more other entities (the “Other Constituent Companies”) shall have become separate wholly-owned Subsidiaries of a holding company, and the ultimate beneficial owners of the Class A Common Stock and Class B Common Stock immediately prior to such transaction or series of transactions, together with the ultimate beneficial owners of the outstanding equity interests in the Other Constituent Companies immediately prior to such transaction or series of transactions, shall have become the equityholders of the new holding company in exchange for their respective equity interests in the Company and the Other Constituent Companies, and such transaction or transactions would not otherwise constitute a “Change in Control” assuming references to the Company are references to such holding company. In addition, with respect to any payment considered to be nonqualified deferred compensation under Section 409A of the Code, to the extent applicable, that is payable upon a Change in Control or other similar event, to the extent required to avoid the imposition of any additional tax, interest or penalty under Section 409A of the Code, no amount will be payable unless such Change in Control or other event constitutes a “change in control event” within the meaning of Section 1.409A-3(i)(5) of the Treasury Regulations.

v. “Change in Control Qualifying Termination” means a Qualifying Termination that occurs during the period beginning three (3) months prior to, and ending eighteen (18) months following, the consummation of a Change in Control.

vii. “Good Reason” means, (A) if you are a party to an employment, severance-benefit, change-in-control or similar agreement (including an offer letter) with the Company, FTW or any of their respective subsidiaries that contains a definition of “Good Reason,” the definition set forth in such agreement for so long as such agreement is in effect; or (B) otherwise, it shall mean, in each case, without your consent: (i) a material breach by the Company or its Affiliates of this Agreement or any other material agreement between you and the Company or its Affiliates, including any employment agreement or offer letter of employment; (ii) a material diminution of your duties, responsibilities or status other than a change in reporting line or position as a result of, and consistent with, changes in the organizational structure due to a Change in Control in which the Company or any of its Affiliates becomes a subsidiary of an acquiring entity or its affiliates or as a result of the sale, license or other divestiture of a business line or division or business segment; (iii) a material reduction by the Company or its Affiliates in your base salary or target bonus opportunity; or (iv) the relocation of your principal place of business by more than fifty (50) miles. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition you believe constitutes Good Reason, you provide the Company with a written notice (a “Good Reason Notice”) that specifically explains the basis for your belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of the Company’s receipt of the Good Reason Notice, the Company fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after the Company’s receipt of the Good Reason Notice, and (z) you actually terminate your Employment (and, if applicable, other service relationship) within sixty (60) days following the end of such cure period.

viii. “Non-Change in Control Qualifying Termination” means a Qualifying Termination that is not a Change in Control Qualifying Termination.

ix. “Performance-Based Equity” means equity or equity-based awards (or portions) granted to you by the Company after the Effective Time that are eligible to vest, as of the Separation Date, in whole or in part (excluding any portion that qualifies as Time-Based Equity) based on the performance of the Company and its Affiliates; provided that in no event shall any equity or equity-based award granted to you under the McAfee 2017 Management Incentive Plan and no award issued in exchange or substitution therefor (e.g., performance-based restricted stock units settled in shares of the Company’s Class A common stock substituted for performance-based restricted equity units of Foundation Technology Worldwide LLC) will be treated as “Performance-Based Equity”.

x. “Prior Agreement” means [____].

xi. “Qualifying Termination” means a termination of your Employment by (i) the Company or any of its Affiliates without Cause, or (ii) your resignation from the Company and its Affiliates for Good Reason. A “Qualifying Termination” does not include a termination of your Employment due to your death or disability.
xii. “Restrictive Covenants” means all non-competition, non-solicitation, no-hire, non-disparagement, invention assignment, cooperation and other restrictive covenants or similar obligations, in each case, to or in favor of the Company or any of its Affiliates by which you are currently bound, which shall remain in full force and effect in accordance with their terms.

xiii. “Section 409A” means, collectively, Section 409A of the Code and the regulations thereunder.

xiv. “Separation Date” means the date your Employment terminates.

xv. “Time-Based Equity” means equity or equity-based awards (or portions) issued to you by the Company or Foundation Technology Worldwide, LLC that are eligible to vest solely based on your continued Employment.

2. Conditions to Payment; Restrictive Covenants. Any obligation of the Company to pay or provide you with any severance payments or benefits under this Agreement is conditioned upon (i) your continued (A) compliance with any Restrictive Covenants regarding non-competition, non-solicitation and no-hire and (B) material compliance with any other Restrictive Covenants, and (ii) your execution and delivery to the Company of a general release and waiver of claims in favor of the Company and its Affiliates in substantially the form attached hereto as Exhibit B (the “Release”) and the Release becoming fully effective and irrevocable by the date specified therein, but in no event more than sixty (60) days following the Separation Date. BY SIGNING THIS AGREEMENT YOU EXPRESSLY AFFIRM THAT YOU ARE AND SHALL REMAIN BOUND BY ALL RESTRICTIVE COVENANTS THAT APPLY TO YOU IN ACCORDANCE WITH THEIR TERMS TO THE SAME EXTENT AS IF SET FORTH IN FULL HEREIN.

3. No Other Severance Benefits. The payments provided by this Agreement are in lieu of and shall supersede any severance or similar payments or benefits that you may otherwise be entitled to upon termination of your Employment, including, without limitation, under the Prior Agreement or any severance policy of the Company or any of its Affiliates; provided that if payments or benefits become payable hereunder and if the severance payments and benefits provided under the Prior Agreement remained payable, to the extent such payments and benefits would be greater than the payments and benefits payable hereunder (the “Excess Payments”), the Excess Payments shall, subject to terms and conditions of this Agreement, be payable hereunder but in accordance with the payment schedule that would have applied to them under the Prior Agreement as determined in good faith by the Company (taking into account the payments and benefits provided hereunder and with due regard for Section 409A).

4. Withholding. The Company and its Affiliates may withhold from all amounts payable under this Agreement any taxes or other amounts required by law to be withheld with respect to such payments, as determined by the Company or any of its Affiliates in its sole discretion.

5. Scope of Agreement. Nothing in this Agreement will be deemed to entitle you to continued Employment or other service, limit the rights of the Company or its Affiliates to terminate your Employment at any time for any reason or alter the at-will nature of your Employment.
6. Section 409A. All amounts payable under this Agreement are intended to be exempt from, or comply with, the requirements of Section 409A. To the extent required to comply with or be exempt from Section 409A, you will not be considered to have terminated employment with the Company or its Affiliates for purposes of this Agreement, and no payment will be due to you under this Agreement, until you have incurred a “separation from service” from the Company and its Affiliates within the meaning of Section 409A (after giving effect to the presumptions set forth therein). If you are determined to be a “specified employee” at the time of your separation from service and the payments to you hereunder are deemed to be “nonqualified deferred compensation” within the meaning of Section 409A then, to the extent necessary to prevent any accelerated or additional tax under Section 409A, payment of the amounts payable under this Agreement will be delayed until the earlier of (i) the date that is six months and one day following your separation from service or (ii) your death. Each amount paid to you pursuant to this Agreement shall be treated as a separate payment for purposes of Section 409A and the right to a series of installment payments under this Agreement shall be treated as the right to a series of separate payments. To the extent required by Section 409A, if the period available to execute (and not revoke) the Release spans two calendar years, any payments or benefits provided to you under this Agreement will be paid in the second calendar year. To the extent required to comply with Section 409A, a Change in Control will not be deemed to occur for purposes of this Agreement unless it is a “change in control event” as defined in Section 1.409A-3(i)(5)(i) of the Treasury Regulations, and if it is not a “change in control event,” payment of the severance described in Section 1(b) of this Agreement shall instead be paid as provided under Section 1(a) of this Agreement (unless the severance, or portion thereof, could be paid earlier without resulting in adverse tax consequences under Section 409A). Notwithstanding the foregoing or anything to the contrary in this Agreement, neither the Company nor any other person will be liable to you by reason of any acceleration of income, or any additional tax (including any interest and penalties), asserted with respect to any of the payments under this Agreement, including by reason of the failure of this Agreement to satisfy the applicable requirements of Section 409A in form or in operation. To the extent required to avoid an accelerated or additional tax under Section 409A, amounts reimbursable to you under this Agreement shall be paid to you on or before the last day of the year following the year in which the expense was incurred and the amount of expenses eligible for reimbursement (and in-kind benefits provided to you) during any one year may not affect amounts reimbursable or provided in any subsequent year and may not be liquidated or exchanged for any other benefit.

7. Section 280G. If all, or any portion, of the payments or benefits provided under this Agreement or otherwise, either alone or together with any other payment or benefit that you receive or are entitled to receive from the Company or any of its subsidiaries or affiliates, could reasonably be expected to constitute an “excess parachute payment” within the meaning of Section 280G of the Code, then, notwithstanding anything in this Agreement or any other agreement or plan to the contrary, you will be entitled to receive: (A) the amount of such payments or benefits, reduced such that no portion thereof shall fail to be tax deductible under Section 280G of the Code (the “Limited Amount”), or (B) if the amounts otherwise payable hereunder and under any other agreements and plans of the Company and its subsidiaries and affiliates (without regard to clause (A)), reduced by all taxes applicable thereto (including, for the avoidance of doubt, the excise tax imposed by Section 4999 of the Code) would be greater than the Limited Amount reduced by all taxes applicable thereto, the amounts otherwise payable hereunder and thereunder. All determinations under this Section 7 will be made by an accounting, consulting, or valuation firm selected, and paid for, by the Company and any reductions in payments or benefits hereunder shall be made by reducing first any payments or benefits that are exempt from Section 409A and then reducing any payments or benefits that are subject to Section 409A in the reverse order in which such payments or benefits would be paid or provided (beginning with such payment or benefit that would be made last in time and continuing, to the extent necessary, through to such payment or benefit that would be made first in time). 8
8. Assignment. Neither the Company nor you may assign any rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other, except that the Company may assign its rights and obligations under this Agreement without your consent to one of its Affiliates, and the Company will assign its rights and obligations under this Agreement in the event of a reorganization, consolidation, or merger involving the Company or any of its Affiliates in which the Company is not the surviving entity, or a transfer of all or substantially all of the Company’s assets or line of business to which your Employment principally relates. This Agreement shall inure to the benefit of and be binding upon you and the Company and your and its respective successors, executors, administrators, heirs and permitted assigns.

9. Company Policies. By your execution of this Agreement, you acknowledge that all compensation and benefits paid or provided to you under this Agreement or otherwise shall be subject to the McAfee Clawback Policy and the McAfee Executive Officer and Director Equity Ownership Requirements, and you agree that you will comply with the terms of such policies as in effect from time to time.

10. Choice of Law; Forum; Validity. This Agreement, including Exhibit A will be governed by and construed in accordance with the laws of the State of Delaware, without regard to any conflict of laws principles that could result in the application of the laws of another jurisdiction. Except as otherwise provided by any applicable arbitration agreement with the Company or its Affiliates by which you are bound, you and all persons claiming through you agree to submit to the exclusive jurisdiction of the courts of and in the State of Delaware in connection with any dispute arising out of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other document, no exception to the application of Delaware law or choice of forum shall apply with respect to you or any person claiming through you even if you are an employee who primarily resides and/or works in California. By signing this Agreement, you acknowledge and agree that you have been individually represented by legal counsel in negotiating the terms of this Agreement. For the avoidance of doubt, the Restrictive Covenants will be subject to the law of the jurisdiction specified by the terms set forth in the applicable Restrictive Covenant agreement.

11. Notice. For purposes of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

If to the Company: McAfee Corp.
6220 America Center Drive
San Jose, California 95002
Attn: General Counsel

If to you: To your address on file with the Company
12. Miscellaneous.

(a) Entire Agreement. Subject to Section 3, this Agreement (including Exhibit A) is the entire agreement between you and the Company, and replaces all prior and contemporaneous communications, agreements, and understandings, whether written or oral, with respect to the subject matter described herein; provided that the foregoing shall not supersede (i) any effective confidentiality, assignment of intellectual property or other restrictive covenant agreement, policy or other similar arrangement in favor of the Company or any of its Affiliates by which you are bound, including under the Prior Agreement or (ii) any arbitration or similar agreement with the Company or any of its Affiliates by which you are bound.

(b) Modification/Amendment. No modification or amendment of this Agreement will be valid unless such modification or amendment is agreed to in writing and signed by you and by a duly authorized officer of the Company.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be an original and all of which together will constitute the same instrument.

[The remainder of the page is intentionally left blank.]
You acknowledge that you have been and are hereby advised of your right to consult an attorney before signing this agreement.

Sincerely,

MCAFEE CORP.

By: ____________________________
Name: [Name]
Title: [Title]

ACCEPTED AND AGREED:

Name: [Name]
INVENTION ASSIGNMENT NOTICE

You are hereby notified that the Restrictive Covenant Agreement among you, McAfee. Corp., a Delaware corporation, and McAfee, LLC, a Delaware limited liability company, dated as of [_______], 2020, does not apply to any invention which qualifies fully for exclusion under the provisions of Section 2870 of the California Labor Code. Following is the text of California Labor Code § 2870:

CALIFORNIA LABOR CODE SECTION 2870

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

MCAFEE CORP.

By: ____________________________
Name: __________________________
Title: __________________________

MCAFEE, LLC

By: ____________________________
Name: __________________________
Title: __________________________
I acknowledge receiving a copy of this Invention Assignment Notice:

[Executive Name]

Date:____________________
RELEASE OF CLAIMS

FOR AND IN CONSIDERATION OF the severance pay and benefits to be provided to me under the letter agreement between me, McAfee Corp., a Delaware corporation (the “Company”), (the “Severance Agreement”), which are conditioned on my signing this Release of Claims and to which I am not otherwise entitled, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, on my own behalf and on behalf of my heirs, executors, administrators, beneficiaries, representatives and assigns, and all others connected with or claiming through me, hereby release and forever discharge the Company and its current and past parents, subsidiaries and other affiliates and all of their respective past, present and future officers, directors, trustees, shareholders, employees, agents, employee benefit plans, general and limited partners, members, managers, investors, joint venturers, representatives, successors and assigns, and all others connected with any of them, both individually and in their official capacities (collectively, the “Released Parties”), from any and all causes of action, rights and claims of any type or description, known or unknown, which I have had in the past, now have, or might now have, through the date of my signing of this Release of Claims, in any way related to, connected with or arising out of my employment or its termination or the Severance Agreement or pursuant to any federal, state or local law, regulation or other requirement (including without limitation Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or the fair employment practices statute of the state or states in which I was previously employed by the Company or otherwise had a relationship with the Company or any of its subsidiaries or other affiliates, each as amended from time to time) (collectively, the “Released Claims”). This Release of Claims shall not apply to (a) any claim that arises after I sign this Release of Claims, (b) any rights to indemnification that I may have, (c) any claim that may not be waived pursuant to applicable law, (d) my rights to severance pay and benefits under the Severance Agreement as set forth on Schedule I, (e) any rights I may have in respect of any vested equity that remains outstanding in accordance with its terms after my termination of employment or (f) my rights to any vested benefits to which I am entitled under the terms of any of the Company’s employee benefit plans.

If I am a California-based employee, in signing this Release, I expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance of such specific waiver of Section 1542, which Section states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Schedule to reflect severance owed at termination.
Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, I expressly acknowledge that this Release is intended to include in its effect, without limitation, all Released Claims which I do not know or suspect to exist in my favor at the time of execution hereof, and that this Release contemplates the extinguishment of such Release Claim or Released Claims.

Notwithstanding the foregoing, nothing in this Release of Claims shall be construed to prohibit me from filing a charge with or participating in any investigation or proceeding conducted by the federal Equal Employment Opportunity Commission or a comparable state or local agency, except that I hereby agree to waive my right to recover monetary damages or other individual relief in any such charge, investigation or proceeding, or any related complaint or lawsuit filed by me or by anyone else on my behalf.

In signing this Release of Claims, I acknowledge my understanding that I may consider the terms of this Release of Claims for up to [twenty-one (21)/forty-five (45)]\(^2\) days from the date I receive it and that I may not sign this Release of Claims until after the date my employment with the Company terminates. I also acknowledge that I am hereby advised by the Company to seek the advice of an attorney prior to signing this Release of Claims; that I have had sufficient time to consider this Release of Claims and to consult with an attorney, if I wished to do so, or to consult with any other person of my choosing before signing; and that I am signing this Release of Claims voluntarily and with a full understanding of its terms.

I further acknowledge that, in signing this Release of Claims, I have not relied on any promises or representations, express or implied, that are not set forth expressly in the Release of Claims. I understand that I may revoke this Release of Claims at any time within seven (7) days of the date of my signing by written notice to the Chairman of the Company’s Board of Directors and that this Release of Claims will take effect only upon the expiration of such seven-day revocation period and only if I have not timely revoked it.

Intending to be legally bound, I have signed this Release of Claims as of the date written below.

Signature: 

Name: 

Date Signed: 

\(^2\) To be determined by the Company at the time of separation.
2017 MANAGEMENT INCENTIVE PLAN
(Amended and Restated as of ____________, 2020)

1. Defined Terms. Schedule A, which is incorporated herein by reference, defines the terms used in the Plan and sets forth certain operational rules related to those terms.

2. Purpose. The Plan is intended to advance the interests of FTW and McAfee by providing for the grant to Participants of equity- and cash-based Awards. Awards under the Plan are intended to align the incentives of Participants and investors in McAfee and FTW and to improve the performance of McAfee, FTW and their Subsidiaries.

3. Administration. The Administrator shall administer the Plan, and shall have discretionary authority, subject only to the express provisions of the Plan, to administer and interpret the Plan and the Award Agreements; to determine eligibility for and grant Awards; to determine, alter, amend, modify or waive the terms and conditions of any Award; to prescribe the purchase price or Management Incentive Unit Return Threshold, if any, applicable to any Award; to prescribe forms, rules and procedures; and to otherwise do all things necessary or desirable to carry out the purposes of the Plan and any Award Agreement. All determinations of the Administrator made with respect to the Plan or any Award Agreement are conclusive and will bind all Persons (including, without limitation, Participants and their beneficiaries, successors or Permitted Transferees).

4. Limits on Awards. As of immediately following the Effective Time, Awards consisting of or in respect of (a) __________ FTW Management Incentive Units, (b) __________ FTW Class A Units, and (c) __________ McAfee Shares are outstanding under the Plan. Other than such Awards, no further Awards based on, or consisting of, such securities will be granted to any Participant; however, for the avoidance of doubt, such Awards may be converted or exchanged for Awards consisting of or in respect of any other type of security.

5. Eligibility and Participation. The Administrator, in its sole discretion, has selected Participants from among those current and prospective key employees and other service providers (including partners) of, and consultants and advisors to, McAfee, FTW or any of their Subsidiaries who, in the opinion of the Administrator, have made or may make a significant contribution to the success of McAfee, FTW or any of their Subsidiaries.

6. Rules Applicable to Awards.
   (a) Award Provisions. The Administrator has determined or will determine the terms of all Awards, subject to the limitations provided herein, and shall furnish or has furnished to each Participant an Award Agreement setting forth the terms applicable to the Participant’s Award. By accepting an Award, the Participant agrees to the terms of the Award Agreement and of the Plan.
(b) **Vesting.** A Participant’s Award will vest on the terms and conditions set forth in the Participant’s Award Agreement.

(c) **Transferability.** Except as the Administrator otherwise expressly consents to in writing, all Awards are non-transferable, other than by will or by the laws of descent and distribution; provided that, subject to Section 11(d), Awards consisting of FTW Management Incentive Units or FTW Class A Units and FTW Class A Units received upon the settlement of FTW RSUs (in each case, to the extent they are vested) may be transferred to the extent permitted under, and subject to the conditions of, the LLC Agreement, any applicable documents governing the terms of such Awards in respect of the initial public offering of McAfee Shares and any other documents governing the terms of such Awards.

(d) **Taxes.** The Administrator may make such provision for the withholding or other payment of taxes as it deems necessary or appropriate with respect to any Award, FTW Class A Units issued under an Award, securities received upon or in connection with settlement of an Award, securities exchanged for an Award, FTW MIUs or FTW Class A Units or otherwise in connection with the issuance, disposition, holding or exchange of any of the foregoing. Any payment to a Participant, or other transaction in respect of Participant’s Award or any securities issued in respect thereof (including in connection with any exchange or similar transaction) will be conditioned upon the Participant’s full satisfaction of such withholding or other tax requirements. Without limiting the foregoing, in order to satisfy such withholding or other tax requirements, FTW and/or McAfee may (i) require withholding or other taxes to be paid in cash or cash equivalents, (ii) require or permit broker-assisted “same day sale” transactions of McAfee Shares to cover taxes up to the maximum statutory tax withholding rates, (iii) if authorized by FTW or McAfee in its sole discretion, provide for “net withholding” of securities based on their fair market value (as determined by the Administrator in its sole discretion) up to the maximum statutory tax withholding rates, or (iv) any provide for combination of the foregoing. Any amounts so withheld by the Administrator pursuant to this Section 6(d) shall be treated as though such payment had been made directly to the Participant.

7. **Rights Limited.** Nothing in the Plan will be construed as giving any Person the right to continued Employment. The grant of an Award to a Participant shall not give the Participant the right to any Award in the future. The loss of potential appreciation in an Award will not constitute an element of damages in the event of a termination of a Participant’s Employment for any reason, even if such termination is in violation of an obligation of McAfee, FTW or any of their Affiliates to the Participant.

8. **Section 409A.** Subject to Section 11(g), Awards under the Plan are intended to be exempt from, or comply with, the requirements of Section 409A and shall be construed and administered accordingly. If a Participant is determined on the date of the Participant’s termination of Employment to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then, with regard to any payment that is considered nonqualified deferred compensation under Section 409A, to the extent applicable, and that is payable on account of a “separation from service”, such payment will be made or provided on the date that is the earlier of (i) the first business day following the expiration of the six-month period measured from the date of such “separation from service” and (ii) the date of the Participant’s death (the “Delay Period”). Upon the expiration of the Delay Period, all payments
delayed pursuant to this Section 8 (whether they would have otherwise been payable in a single lump sum or in installments in the absence of such delay) will be paid, without interest, on the first business day following the expiration of the Delay Period in a lump sum and any remaining payments due under the Award will be paid in accordance with the normal payment dates specified for them in the applicable Award Agreement. For purposes of Section 409A, each payment made under the Plan or any Award will be treated as a separate payment.

9. Adjustments; Covered Transactions.

   (a) In the event of any stock or FTW Unit split, stock or FTW Unit dividend or distribution, combination of stock or FTW Units, recapitalization or other similar change in the capital structure of FTW or McAfee that constitutes an equity restructuring within the meaning of FASB ASC Topic 718 (or any successor provision), the Administrator shall make appropriate adjustments to the number and kind of securities subject to Awards, any Management Incentive Unit Return Threshold applicable to such Awards, and any other provision of Awards determined by the Administrator to be affected by such change. The Administrator may also make adjustments of the type described in this Section 9(a) in connection with any other event if the Administrator determines that such adjustments are appropriate to avoid economic distortion in the operation of the Plan.

   (b) In the event of a Covered Transaction (including a Covered Transaction undertaken in connection with a Public Offering), outstanding Awards shall be subject to the agreement or arrangement governing the terms of the Covered Transaction, which may provide, without limitation, for (i) the assumption or substitution of Awards with similar awards by an acquiring or surviving entity (which may include requiring Participants holding unvested FTW Management Incentive Units, FTW Class A Units, FTW RSUs, restricted stock units payable in McAfee Shares or McAfee Shares to exchange or convert such unvested Award(s) for equity securities or other property or rights that may include, but are not limited to, awards to acquire the same consideration paid to or received by the equityholders of McAfee or FTW (or by McAfee or FTW directly), as the case may be, pursuant to the Covered Transaction), (ii) a cash-out of Awards (including for no payment if the Fair Market Value of an Award is zero at the time of the Covered Transaction) or (iii) the termination of unvested Awards without payment in respect thereof; provided, however, that, in connection with any Covered Transaction that does not constitute a Change in Control, notwithstanding the terms of any document to the contrary, in the event that unvested Awards are to be terminated without payment (except as provided in clause (ii) above) and without assumption or substitution as contemplated by clause (i) above, then 100% of such Awards shall immediately vest as of the date immediately preceding the Covered Transaction.

   (c) The Administrator may provide that Awards held by different Participants, or different portions of an Award or Awards held by a Participant, shall be treated differently in connection with a Covered Transaction.

   (d) Nothing in this Section 9 shall limit the rights of McAfee, FTW, the Intel Investors, the TPG Investor, or any of their Permitted Transferees under the LLC Agreement.
10. Amendment and Termination. The Administrator may at any time or times amend or terminate the Plan or any Award for any purpose which may at the time be permitted by applicable law; provided that, except as otherwise expressly provided in the Plan or in an Award Agreement, the Administrator may not, without the Participant’s consent, alter the terms of the Plan or an outstanding Award so as to materially and adversely affect the Participant’s rights under an outstanding Award, except to the extent the Administrator expressly reserved the right to do so in the Plan or the applicable Award Agreement. For the avoidance of doubt, an adjustment to an Award pursuant to the terms of the LLC Agreement or Section 9(a) or (b) above shall not be treated as an amendment requiring the Participant’s consent.

11. Miscellaneous.

(a) Conditions to Issuance of Securities. Neither McAfee or FTW shall be required to issue any securities upon the grant or vesting of any Award (or portion thereof) prior to the satisfaction of all of the following conditions: (i) the completion of any registration or other qualification of such securities under any state, federal or non-U.S. law, stock exchange requirements or under the rules or regulations of the Securities and Exchange Commission or any other state, federal or non-U.S. regulatory body which the Administrator shall, in its reasonable discretion, deem necessary or advisable; (ii) the obtaining of any approval or other clearance from any state, federal or non-U.S. governmental agency which the Administrator shall, in its reasonable discretion, determine to be necessary or advisable; and (iii) the receipt by McAfee or FTW of any other document or agreement required by the Administrator in good faith in connection with the grant of an Award.

(b) Rights with respect to Securities. A Participant’s rights as a holder of any securities will be subject to the terms and conditions of the Plan, any applicable Award Agreement and (if applicable) the LLC Agreement. Once an Award consisting of FTW Units is granted, the Participant shall have the rights and obligations provided for under the LLC Agreement; provided that until all of the restrictions imposed under the applicable Award Agreement, if any, expire or shall have been removed, the Participant’s interest in such FTW Units shall be subject to forfeiture as provided in the Plan and in the applicable Award Agreement. No Participant shall have any rights as a Member in respect of any Award based on or payable in FTW Units unless and until such FTW Units are actually issued. As a condition to receiving any Award consisting of FTW Management Incentive Units or receiving any FTW Units upon the vesting or settlement of any Award, the Participant will become a party to the LLC Agreement will be required to sign such customary investment, investment intent or similar documents as may be prescribed by the Administrator.

(c) Investment Intent. McAfee or FTW may require a Participant, as a condition of the grant or issuance of any Award, to give written assurances reasonably satisfactory to it (i) as to the Participant’s knowledge and experience in financial and business matters; and (ii) stating that the Participant is acquiring the Award for the Participant’s own account and not with any present intention of selling or otherwise distributing the Award. If securities are certificated, McAfee or FTW may place such legends on certificates (or such other appropriate documents) evidencing Awards issued under this Plan as the Administrator deems necessary or appropriate in order to comply with applicable law or the LLC Agreement, including, but not limited to, legends describing restrictions on the transfer of the securities.
Publicly Traded Partnership. The provisions of this Section 11(d) shall apply notwithstanding anything to the contrary in this Plan, any Award Agreement or the LLC Agreement, except as may be expressly provided in a sub-plan established pursuant to Section 13. If at any time the Administrator determines, in its sole discretion, that the transfer, forfeiture or repurchase of an Award (or portion thereof) consisting of FTW Management Incentive Units or of FTW Class A Units delivered in satisfaction of an Award could result in FTW being treated as a Publicly Traded Partnership: (i) such Award or such FTW Units may not be transferred, (ii) the forfeiture of such Award (or portion thereof) shall be delayed, (iii) the closing of any repurchase or redemption of such Award (or portion thereof) or any such FTW Units in accordance with the exercise of any call or redemption rights set forth in the LLC Agreement, the applicable Award Agreement or otherwise shall not occur sooner than sixty (60) days after written notice thereof is given to the Participant and (iv) either (A) the repurchase price of such Award (or portion thereof) or any such FTW Class A Units shall not be established until at least 60 calendar days after receipt of written notice by the Participant or (B) the Fair Market Value for such Award or FTW Units for purposes of effecting repurchases or redemptions shall be established no more than four (4) times in any taxable year of FTW, in each case, until the earliest time at which such transfer, forfeiture or repurchase could be made without FTW being so treated, as determined by the Administrator in its sole discretion. In the event that forfeiture of any Award is delayed in accordance with this Section 11(d), during any such period of delayed forfeiture, to the extent that such Award was unvested at the date such forfeiture would have occurred absent the application of this Section 11(d), (x) such Award (or portion thereof) shall no longer be eligible to vest in the ordinary course pursuant to its terms and (y) in connection with any Covered Transaction that occurs during such period of delayed forfeiture, such Award shall be treated in the same manner as it would have been treated had the event triggering the forfeiture that is delayed pursuant to the application of this Section 11(d) not occurred. Any transfer, forfeiture or repurchase that is not in compliance with the terms of this Section 11(d) shall be null and void \textit{ab initio}.

Distributions. Each Participant holding FTW Management Incentive Units or FTW Class A Units shall receive distributions, if any, in respect of such FTW Management Incentive Units or FTW Class A Units, as applicable, in accordance with the provisions of the LLC Agreement. Except as provided for in an Award Agreement, no holder of Awards not described in the immediately preceding sentence shall be entitled to any distributions, dividends, dividend equivalents or similar payments with respect thereto.

Waiver of Jury Trial. By accepting an Award under the Plan, to the extent permitted by applicable law, each Participant waives any right to a trial by jury in any action, proceeding or counterclaim concerning any rights under the Plan and any Award, or under any amendment, waiver, consent, instrument, document or other agreement delivered or which in the future may be delivered in connection therewith, and agrees that any such action, proceedings or counterclaim shall be tried before a court and not before a jury. By accepting an Award under the Plan, each Participant certifies that no officer, representative, or attorney of McAfee, FTW or any of their Affiliates has represented, expressly or otherwise, that McAfee or FTW would not, in the event of any action, proceeding or counterclaim, seek to enforce the foregoing waivers.
(g) **Limitation of Liability.** Notwithstanding anything to the contrary in the Plan or any Award Agreement, none of McAfee or FTW or any of their Affiliates, or any Person acting on behalf of McAfee or FTW or any of their Affiliates, shall be liable to any Participant, to the estate, or any beneficiary or Permitted Transfersee of any Participant or to any other Person by reason of any acceleration of income, any additional tax, or any other tax or liability asserted by reason of the failure of an Award to satisfy the requirements of Section 409A, by reason of Section 4999 of the Code, or by reason of the failure of any FTW Management Incentive Unit to be treated or qualify as a profits interest for U.S. federal income tax or other purposes.

(h) **Indemnification.** To the fullest extent permitted by law, the members, partners, officers, employees and agents of the Administrator (solely in their capacities as such and not, for the avoidance of doubt, in their capacity as a Participant) shall be indemnified and held harmless by McAfee or FTW from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such Person in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled as a matter of law, or otherwise, or any power that McAfee or FTW may have to indemnify them or hold them harmless.

(i) **Unfunded Plan.** The obligations of McAfee and FTW under the Plan are unfunded, and Participants shall have no right to specific assets of McAfee or FTW in respect of any Award. Participants will be general unsecured creditors of McAfee or FTW with respect to any amounts due or payable under the Plan.

12. **Governing Law.** Except as otherwise provided by the express terms of an Award Agreement, the validity, construction and effect of the Plan and of Awards under the Plan, and of any determinations or decisions made by the Administrator relating to the Plan or to an Award under the Plan, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law. Any action or suit with respect to the Plan or an Award Agreement will be brought in the federal or state courts of the State of Delaware, and each Participant agrees and submits to the personal jurisdiction and venue thereof.

13. **Establishment of Sub-Plans.** The Administrator may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities, tax or other laws of various jurisdictions. The Administrator will establish such sub-plans by adopting supplements to the Plan setting forth (a) such limitations on the Administrator’s discretion under the Plan as it deems necessary or desirable and (b) such additional terms and conditions as it deems in good faith to be necessary or appropriate, which may supersede contrary terms in the LLC Agreement, the Plan or an applicable Award Agreement. All supplements so established will be deemed to be part of the Plan, but each supplement will apply only to Participants within the applicable jurisdiction (as determined by the Administrator).
14. **Entire Agreement.** The Plan, any applicable Award Agreements and the LLC Agreement (if applicable) constitute the entire agreement with respect to the subject matter hereof and thereof. In the event of any inconsistency between the Plan and an Award Agreement, the terms and conditions of the Plan shall control. In the event of any inconsistency between the LLC Agreement and the Plan or an Award Agreement, the LLC Agreement (if applicable) shall control, except to the extent expressly set forth in the Plan or an Award Agreement.

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Schedule A

Definitions of Terms

The following terms, when used in the Plan, will have the meanings and be subject to the provisions set forth below:

“Administrator” means (i) with respect to any Awards consisting of or based on FTW Class A Units or FTW Management Incentive Units, the Managing Member (as directed by the Leadership Development & Compensation Committee of the board of directors of McAfee) and (ii) with respect to any Awards consisting of or based on McAfee Shares, the Leadership Development & Compensation Committee of the board of directors of McAfee, and all references herein shall be construed accordingly. The Administrator may delegate its authority to a committee and may delegate ministerial tasks to such Person or Persons as it deems appropriate, subject to applicable law and stock exchange requirements. The full board of directors of McAfee is also authorized to act as the Administrator, if it so elects.

“Affiliate” has the meaning set forth in the LLC Agreement.

“Award” means an award consisting of, or based on, FTW Class A Units (including FTW RSUs), FTW Management Incentive Units or McAfee Shares (including restricted stock units under which McAfee Shares may be delivered), in each case, granted under the Plan. The term “Award” will also be construed to refer to any securities received in respect of the settlement or exchange of an Award for such securities (in one or more transactions).

“Award Agreement” means a written agreement between McAfee or FTW and the Participant evidencing an Award, as it may be amended or modified from time to time (which may consist of one or more documents, including a notice of, or agreement regarding, amended award terms).

“Board of Managers” means the Administrator.

“Change in Control” means, except as otherwise provided in an Award Agreement or other applicable written agreement signed by FTW and/or McAfee, a transaction or series of transactions in which (i) the TPG Investor and the Intel Investors sell (including by reason of a merger, recapitalization, or sale of securities) (A) more than 60% of their aggregate interests (including their interests in both McAfee and FTW) to an unrelated third party who is a financial buyer (including, without limitation, a limited partner or other passive investor) (and do not directly or indirectly hold 40% or more of the acquiring Person after the transaction) or (B) more than 50% of their aggregate interests (including their interests in both McAfee and FTW) to an unrelated third party who is a strategic buyer, or (ii) there is a sale or exclusive license of substantially all of the assets of McAfee and FTW (on a combined basis) to an unrelated third party. A Public Offering or a sell-down into the market following a Public Offering (including, for the avoidance of doubt, the initial public offering of McAfee Shares) shall not constitute a Change in Control.
“Code” means the U.S. Internal Revenue Code of 1986 as from time to time amended and in effect, or any successor statute as from time to time in effect. For the avoidance of doubt, any reference to any section of the Code includes reference to any regulations (including proposed or temporary regulations) promulgated under that section and any Internal Revenue Service guidance thereunder.

“Company” means either FTW or McAfee, or both FTW and McAfee, as determined by the Administrator in its sole discretion.

“Covered Transaction” means any transaction in which (i) one or more classes of securities issued by McAfee or FTW are converted into, or exchanged for, securities in another form issued by McAfee or FTW, any of their direct or indirect subsidiaries, a newly formed parent or affiliated Persons, (ii) McAfee or FTW merges or otherwise combines with one or more Affiliates of McAfee or FTW with McAfee or FTW surviving any such merger or combination, or (iii) any other transaction the Administrator determines to be a Covered Transaction.

“Effective Time” means the time at which the initial public offering of McAfee Shares was consummated.

“Employee” means any Person who is employed by or is a service provider to McAfee, FTW and/or any of their Affiliates.

“Employment” means a Participant’s employment or other service relationship with McAfee, FTW and/or any of their Affiliates. Unless the Administrator provides otherwise, a Participant who receives an Award in his or her capacity as an Employee will be deemed to cease Employment when the employment or service relationship with McAfee, FTW and/or their Affiliates, as applicable, ceases and a Participant who receives an Award in any other capacity will be deemed to continue Employment so long as the Participant is providing substantial services to McAfee, FTW or one of their Affiliates. If a Participant’s relationship is with an Affiliate of FTW or McAfee and that entity ceases to be an Affiliate, unless otherwise determined by the Administrator, the Participant will be deemed to cease Employment when the entity ceases to be an Affiliate unless the Participant transfers Employment to McAfee, FTW or any of their remaining Affiliates.

“Fair Market Value” means, (i) with respect to any Awards consisting of or based on FTW Class A Units or FTW Management Incentive Units, Fair Market Value as defined in the LLC Agreement and (ii) with respect to Awards consisting of or based on McAfee Shares, the closing transaction price of a McAfee Share on the principal national stock exchange on which the McAfee Shares are traded on the date as of which such value is being determined date or, if there shall be no reported transactions for such date, the closing transaction price of a McAfee Share on the immediately preceding date on which a closing transaction price was reported; provided, however, that if McAfee Shares are not listed on a national stock exchange or if Fair Market Value for any date cannot be so determined, Fair Market Value shall be determined by the Administrator by whatever means or method as the Administrator, in the good faith exercise of its discretion, shall at such time deem appropriate; provided, however, in the case of a Covered Transaction, the Fair Market Value of a McAfee Share shall be the value implied by the terms of the Covered Transaction as determined by the Administrator in good faith.

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“FTW” means Foundation Technology Worldwide LLC, a Delaware limited liability company.

“FTW Class A Unit” means a Class A Unit (as defined in the LLC Agreement) of FTW. Immediately prior to the Effective Time, FTW Class A Units were referred to under the Plan and Award Agreements as “Class A Units”, and all references in Award Agreements shall be interpreted mutatis mutandis for such change.

“FTW Management Incentive Unit” means a Management Incentive Unit (as defined in the LLC Agreement) of FTW. Notwithstanding anything to the contrary in any document, subject to Section 11(g) of the Plan, it is intended that all FTW Management Incentive Units granted pursuant to the Plan qualify as “profits interests” for U.S. federal income tax purposes, and the Plan, any applicable Award Agreements, and the LLC Agreement shall be interpreted and administered accordingly. Immediately prior to the Effective Time, FTW Management Incentive Units were referred to under the Plan and Award Agreements as “Management Incentive Units”, and all references in Award Agreements shall be interpreted mutatis mutandis for such change.

“FTW RSU” an unfunded and unsecured promise, denominated in Class A Units, to deliver FTW Class A Units or cash in lieu of Class A Units in the future, subject to certain conditions, including specified performance or other vesting conditions. Immediately prior to the Effective Time, FTW RSUs were referred to under the Plan and Award Agreements as “RSUs”, and all references in Award Agreements shall be interpreted mutatis mutandis for such change. As of the Effective Time, all FTW RSUs have been converted into restricted stock units payable in McAfee Shares and all references in outstanding Award Agreements reflecting grants of FTW RSUs should be construed accordingly (after taking into account such other amendments or modifications as may otherwise have been made to such Awards or the applicable Award Agreements).

“FTW Unit” means a Unit as set forth in the LLC Agreement.

“Intel Investor” means the Intel Member (as defined in the LLC Agreement).

“LLC Agreement” means the amended and restated limited liability company agreement of Foundation Technology Worldwide LLC, dated in or about October 2020, as it may be amended from time to time.

“Management Equity Participation Unit” meant, immediately prior to the Effective Time, an unfunded and unsecured promise, denominated in Management Incentive Units, to deliver an amount in cash based on the value of the notional Management Incentive Units if they were granted on the same date as the Management Equity Participation Units were granted, subject to certain conditions, including specified performance or other vesting conditions. As of the Effective Time, all Management Equity Participation Units have been converted into restricted stock units payable in McAfee Shares and all references in outstanding Award Agreements reflecting grants of Management Equity Participation Units should be construed accordingly (after taking into account such other amendments or modifications as may otherwise have been made to such Awards or the applicable Award Agreements).
“Management Incentive Unit Return Threshold” has the meaning set forth in the LLC Agreement.

“McAfee” means McAfee Corp., a Delaware corporation.

“McAfee Shares” means Class A common stock of McAfee.

“Participant” means an eligible employee or service provider (as provided in Section 5) who is granted an Award under the Plan.

“Permitted Transferee” has the meaning set forth in the LLC Agreement.

“Person” has the meaning set forth in the LLC Agreement.

“Plan” means the McAfee 2017 Management Incentive Plan, as it may be amended from time to time.

“Public Offering” means a public offering and sale of the common equity of McAfee for cash registered under the Securities Act of 1933, as amended, filed with the Securities and Exchange Commission on Form S-1 (or a successor form adopted by the Securities and Exchange Commission); provided, that the following will not be considered a Public Offering: (a) any issuance of common equity interests as consideration for a merger or acquisition or (b) any issuance of common equity interests or rights to acquire common equity interests to existing equityholders of the Company or their Affiliates or to employees of the Issuer on Form S-4 or Form S-8 (or a successor form adopted by the Securities and Exchange Commission) or otherwise.

“Publicly Traded Partnership” means a publicly traded partnership within the meaning of Section 7704 of the Code.

“Section 409A” means Section 409A of the Code.

“Subsidiary” has the meaning set forth in the LLC Agreement.

“TPG Investor” means, collectively, any fund affiliated with TPG (as defined in the LLC Agreement).
Pursuant to Section 13 of the Plan, this supplement has been adopted for purposes of satisfying the requirements of Section 25102(o) of the California Corporations Code to the extent applicable. This supplement may be amended by the Administrator, as necessary or desirable to comply with California law. Any Awards consisting of or based on FTW Units granted under the Plan to a Participant who is a resident of the State of California on the date of grant and who is not an accredited investor (a “California Participant”) will be subject to the following additional limitations, terms and conditions, to the extent applicable:

1. **Additional Limitations on Transferability of Awards.** Except as provided in the next sentence, Awards consisting of or based on FTW Units granted to a California Participant shall not be sold, assigned, transferred, pledged or otherwise encumbered by the person to whom they are granted, either voluntarily or by operation of law, except by will or the laws of descent and distribution. Notwithstanding the foregoing, the Administrator may (but is not required to), as permitted pursuant to the terms of the LLC Agreement, allow Awards consisting of or based on FTW Units to be transferred to a revocable trust, as permitted by Rule 701 of the Securities Act of 1933, as amended, or as otherwise permitted by Section 25102(o) of the California Corporations Code, as in effect from time to time.

2. **Issuance of Awards.** No Award may be granted or issued to a California Participant after the date that is ten (10) years from the earlier of the date the Plan was adopted by the Administrator or the date the Plan was approved by the members of FTW entitled to vote.

3. **Plan Approval.** The Plan was approved by members of FTW entitled to vote by the later of (1) within 12 months before or after the date the Plan was adopted by the Administrator or (2) prior to or within 12 months of the granting of an Award under the Plan in California.

4. **No Application to Awards in respect of McAfee Shares.** This California Supplement shall not apply to any Award consisting of or settled in McAfee Shares.
THIS MANAGEMENT INCENTIVE UNIT AGREEMENT (this “Award Agreement”), dated [                 ] (the “Grant Date”), is made pursuant to the Foundation Technology Worldwide LLC 2017 Management Incentive Plan, as amended from time to time (the “Plan”), and is entered into by and between Foundation Technology Worldwide LLC, a Delaware limited liability company (the “Company”) and [                 ] (“Participant”) in connection with Participant’s performance of services for the Company. Capitalized terms used in this Award Agreement but not otherwise defined herein shall have their respective meanings set forth in the Plan.

THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Award.** Pursuant to the Plan, and on the terms and subject to the conditions set forth in this Award Agreement, the Company hereby grants to Participant, an Award of [                 ] Management Incentive Units as of the Grant Date (this “Award”) on the terms described herein. It is intended that this Award qualify as a “profits interest” for U.S. federal income tax purposes and this Award Agreement shall be interpreted accordingly. Notwithstanding anything to the contrary in any agreement, all parties hereto agree that any holder of Management Incentive Units (including Participant) shall be treated as a partner in the Company for U.S. federal income tax purposes.

2. **Definitions.** For purposes of this Award Agreement, the following terms shall have the following meanings:

3. **Return Threshold.** The Management Incentive Unit Return Threshold that applies to this Award is equal to such amount as reflects a Fair Market Value per Class A Unit outstanding as of the date hereof of $23.93, as determined in accordance with the LLC Agreement. For the avoidance of doubt, in applying the distribution provisions of Section 5 of the LLC Agreement, Participant will share in distributions with respect to each Management Incentive Unit subject to this Award only to the extent that the amounts distributable pursuant to Section 5 exceed such Management Incentive Unit Return Threshold.

4. **Vesting.** [                 ]

5. **Call Option.** Upon the termination of Participant’s Employment for any reason, Section 13 of the LLC Agreement shall apply to all vested Management Incentive Units issued under this Award.
6. **Restrictive Covenants.** Participant acknowledges and agrees that Participant will execute, no later than the date hereof, and shall be bound by, the Restrictive Covenant Agreement attached hereto as Schedule A. The provisions of Schedule A shall survive any termination, expiration, forfeiture, transfer or other disposition of this Award. In addition to any remedies that may be available to the Company or any of its Affiliates, the Administrator may cancel, rescind, terminate, withhold or otherwise limit or restrict this Award at any time if Participant is not in compliance with all material applicable provisions of this Award Agreement and the Plan, or if Participant breaches any provision of Schedule A or any other agreement with the Company or its Affiliates with respect to non-competition, non-solicitation, non-disclosure, confidentiality, no-hire, assignment of rights to intellectual property and/or non-disparagement.

7. **Representations, Warranties, Covenants, and Acknowledgments of Participant.** Participant hereby represents, warrants, covenants, acknowledges and agrees that:

   (a) **Investment.** Participant is acquiring this Award for Participant’s own account, and not for the account of any other Person. Participant is acquiring this Award for investment and not with a view to distribution or resale thereof except in compliance with applicable laws regulating securities.

   (b) **Relation to the Company.** Participant is presently an Employee of the Company or one of its Subsidiaries, and in such capacity has become personally familiar with the business of the Company and/or its Subsidiaries.

   (c) **Access to Information.** Participant has had the opportunity to ask questions of, and to receive answers from, the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial conditions, and results of operations of the Company and its Affiliates.

   (d) **Registration.** Participant understands that the Management Incentive Units have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any applicable securities law, and that, subject to the further restrictions in the LLC Agreement, the Management Incentive Units cannot be transferred by Participant unless such transfer is registered under the Securities Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register the transfer of the Management Incentive Units under the Securities Act or any applicable securities law. The Company has made no representations, warranties, or covenants whatsoever as to whether any exemption from the Securities Act or any applicable securities law, including, without limitation, any exemption for limited sales in routine brokers’ transactions pursuant to Rule 144 of the Securities Act, will be available. If an exemption under Rule 144 is available at all, it will not be available until at least one year from issuance of this Award and then not unless (a) a public trading market then exists in Management Incentive Units (or a successor security thereto); (b) adequate information as to the Company’s financial and other affairs and operations is then available to the public; and (c) all other terms and conditions of Rule 144 have been satisfied.

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(e) **Public Trading.** None of the Company’s equity securities are presently publicly-traded, and the Company has made no representations, covenants or agreements as to whether there will be a public market for any of its securities.

(f) **Tax Advice.** The Company has made no warranties or representations to Participant with respect to the income tax consequences of the transactions contemplated by this Award Agreement, and Participant is in no manner relying on the Company or its representatives for an assessment of such tax consequences.

(g) **One-Time Award.** This Award represents a one-time, discretionary award and shall not in any way be considered as part of Participant’s employment compensation, wages, entitlements, or any other similar compensation or benefits plan or scheme. Eligibility for awards under the Plan are determined by the Administrator in its sole discretion and eligibility for, or receipt of, an award in a certain fiscal year does not imply or guarantee entitlement to an award in any future fiscal years.

8. **Binding Effect.** Subject to the limitations set forth in this Award Agreement, the Plan and the LLC Agreement (including, without limitation, limitations on transfer), this Award Agreement shall be binding upon, and inure to the benefit of, the executors, administrators, heirs, legal representatives, successors and assigns of the parties hereto.

9. **Taxes.**

   (a) **Election under Section 83(b).** Participant shall execute and deliver to the Company, with his or her executed Award Agreement, a copy of the Election Pursuant to Section 83(b) of the Code, substantially in the form attached hereto as Exhibit A.

   (b) **Withholding.** The Administrator will make such provision for the withholding of taxes as it deems necessary under applicable law. Except to the extent the Administrator permits Participant to pay by other means, Participant shall remit cash in an amount sufficient to satisfy such taxes.

10. **Data Privacy.** The Company and Participant’s employer hereby notify Participant of the following in relation to Participant’s personal data and the collection, processing and transfer of such data in relation to this Award and Participant’s participation in the Plan:

    (a) the collection, processing and transfer of Participant’s personal data is necessary for the Company’s administration of the Plan and Participant’s participation in the Plan, and Participant’s denial and/or objection to the collection, processing and transfer of personal data may affect Participant’s ability to participate in the Plan. As such, Participant voluntarily acknowledges, consents and agrees (where required under applicable law) to the collection, use, processing and transfer of personal data as described herein.

    (b) The Company and Participant’s employer hold certain personal information about Participant, including (but not limited to) Participant’s name, home address and telephone number, date of birth, social security number or other employee identification
number, salary, nationality, job title, any equity interests or directorships held in the Company, details of all equity awards or any other entitlement to equity awarded, canceled, purchased, vested, exercised, unvested or outstanding in Participant’s favor for the purpose of managing and administering the Plan (collectively, the “Data”). The Data may be provided by Participant or collected, where lawful, from third parties, and the Company and Participant’s employer will process the Data for the exclusive purpose of implementing, administering and managing Participant’s participation in the Plan. Processing of the Data will take place through electronic and non-electronic means according to logics and procedures strictly correlated to the purposes for which the Data is collected and with confidentiality and security provisions as set forth by applicable laws and regulations in Participant’s country of residence. Data processing operations will be performed in a manner that minimizes the use of personal and identification data when such operations are unnecessary for the processing purposes sought. The Data will be accessible within the Company’s organization only by those persons requiring access for purposes of the implementation, administration and operation of the Plan and for Participant’s participation in the Plan.

(c) The Company and Participant’s employer will transfer Data as necessary for the purpose of implementation, administration and management of Participant’s participation in the Plan, and the Company and/or Participant’s employer may each further transfer Data to any third parties assisting the Company in the implementation, administration and management of the Plan. These recipients may be located in the European Economic Area, the United States or elsewhere throughout the world. Participant hereby authorizes (where required under applicable law) the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for purposes of implementing, administering and managing Participant’s participation in the Plan, including any requisite transfer of such Data as may be required for the administration of the Plan and/or the subsequent holding of equity interests on Participant’s behalf to a broker or other third party with whom Participant may elect to deposit any equity interest acquired pursuant to the Plan, subject to the limitations set forth in the Plan, the LLC Agreement and this Award Agreement. Participant may, at any time, exercise Participant’s rights provided under applicable personal data protection laws (if any), which may include the right to (i) obtain confirmation as to the existence of the Data, (ii) verify the content, origin and accuracy of the Data, (iii) request the integration, update, amendment, deletion, or blockage (for breach of applicable laws) of the Data, and (iv) oppose, for legal reasons, the collection, processing or transfer of the Data that is not necessary or required for the implementation, administration and/or operation of the Plan and Participant’s participation in the Plan. Participant may seek to exercise these rights by contacting Participant’s local human resources manager.

11. Survival of Representations and Warranties and Restrictive Covenants. The representations, warranties and covenants contained in Section 7 hereof shall survive until Participant and his or her Permitted Transferees no longer hold any of the Management Incentive Units issued hereunder. The restrictive covenants contained herein and the remedies for violation of such restrictive covenants contained in Section 6 hereof shall survive the termination of this Award Agreement and shall only expire, if at all, pursuant to their terms or as otherwise agreed in a signed writing by the parties hereto.
12. **Unit Certificate Restrictive Legends.** The certificates evidencing any Management Incentive Units that are certificated may bear such restrictive legends as the Company and/or the Company’s counsel may deem necessary or advisable under applicable law or pursuant to this Award Agreement to evidence the restrictions applicable to such Management Incentive Units.

13. **Notices.** All notices required or permitted hereunder shall be in writing deemed effectively given when delivered in person or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the other party hereto at the address shown beneath his or her or its respective signature to this Award Agreement, or at such other address or addresses as either party shall designate to the other in writing.

14. **Successors and Assigns.** The rights, duties, and obligations under this Award Agreement and the Plan may not be assigned by Participant or the Company, except that this Award Agreement shall be assignable by the Company to any successor entity, including an entity acquiring all, or substantially all, of the assets of the Company. The provisions of this Award Agreement shall be binding on any such assignee.

15. **Entire Agreement; Amendments.** This Award Agreement, the Plan, and the LLC Agreement, constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, including, without limitation, any offer letter or other document or communication to the extent related to any long-term incentive awards of the Company or its Affiliates or the terms thereof. There are no agreements, understandings, specific restrictions, warranties, or representations relating to said subject matter between the parties other than those set forth herein or herein provided for. This Award Agreement may be amended only in accordance with Section 10 of the Plan.

16. **Waivers.** The failure of a party to insist upon strict performance of any provision of this Award Agreement in any one or more instances shall not be construed as a waiver or relinquishment of the right to insist upon strict compliance with such provision in the future. In the event of any ambiguity in this Award Agreement or any matters as to which this Award Agreement is silent, the Plan will govern.

17. **Invalidity.** In the event that any one or more of the provisions of this Award Agreement or any word, phrase, clause, sentence, or other portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Award Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable laws.

18. **Number; Titles.** As used in this Award Agreement, the singular form shall include, if appropriate, the plural. The headings used in this Award Agreement are solely for the convenience and reference of the parties and are not intended to be descriptive of the entire contents of any paragraph and shall not limit or otherwise affect any of the terms, provisions, or construction thereof.
19. **Governing Law.** The validity, construction and effect of this Award Agreement, and of any determinations or decisions made by the Administrator relating to this Award Agreement, and the rights of any and all Persons having, or claiming to have, any interest under this Award Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law. Any suit with respect to this Award Agreement will be brought in the federal or state courts in the districts which include the State of Delaware, and Participant agrees and submits to the personal jurisdiction and venue thereof.

20. **Counterparts.** This Award Agreement may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or electronic means (including “pdf”), and each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

21. **Accession to LLC Agreement.** By execution of this Award Agreement, Participant hereby agrees, in respect of the Management Incentive Units awarded to him or her under this Award Agreement, to be bound by the terms of the LLC Agreement as a Member, and such terms are hereby incorporated by reference as if set out herein in full, except as provided herein. For the avoidance of doubt, this Section 21 shall survive the termination of this Award Agreement.

22. **Power of Attorney.** Participant hereby irrevocably constitutes and appoints the Administrator (or its designee) with full power of substitution, acting jointly or severally, as his or her attorney-in-fact and agent to sign, execute and deliver, in Participant’s name and on his or her behalf, all or any such agreement, deeds, instruments, documents and/or any counterpart thereof or certificates or to take any such action as it deems necessary from time to time or as is required under any applicable law to admit Participant as a Member of the Company or to conduct the business of the Company, including (without limitation) the power and authority to sign, execute and deliver (or attach signature pages to) (i) the LLC Agreement, (ii) any amendment to the LLC Agreement adopted in accordance with its terms, (iii) any agreements, deeds, instruments or documents reasonably necessary to satisfy Participant’s obligations under Section 13 of the LLC Agreement, or (iv) such documents as the Administrator deems necessary in good faith to effectuate the customary lock-up following a Public Offering as set forth in Section 11.1(e) of the LLC Agreement. This power of attorney is given to secure the obligations of Participant hereunder and deemed coupled with an interest of the Administrator and is irrevocable.

23. **Further Representations and Acknowledgements of Participant.**

   (a) Participant hereby represents that he or she has read the Plan and is familiar with the Plan’s terms. Participant hereby acknowledges that he or she has carefully read this Award Agreement and agrees, on behalf of himself or herself and on behalf of his/her beneficiaries, estate and permitted assigns, to be bound by all of the provisions set forth herein and that this Award and Management Incentive Units are subject to all of the terms and provisions of this Award Agreement and of the Plan, as the Plan may be amended in
accordance with its respective terms. In the event of any conflict between the terms of this Award Agreement and the Plan, the Plan shall control.

(b) Participant acknowledges that nothing in this Award Agreement (including exhibits hereto) alters the nature of employment with Company or any Affiliate of the Company. Participant acknowledges having been afforded a reasonable opportunity to consult with financial or legal advisors regarding the consequences of Participant’s acceptance of the grant on the terms and conditions set forth in this Award Agreement.

[Remainder of the page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have executed this Award Agreement on the day and year first above written.

Foundation Technology Worldwide LLC
a Delaware limited liability company

By: ____________________________

Name: [ ]
Title: [ ]

Address:
Foundation Technology Worldwide LLC
Corporate Headquarters
[ ]
Attention: General Counsel

With copies (not constituting notice) to:
[ ]

and

Ropes & Gray LLP
The Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Alfred Rose and Michael Roh
Email: alfred.rose@ropesgray.com and
michael.roh@ropesgray.com

[Management Incentive Unit Agreement of Foundation Technology Worldwide LLC Company Signature Page]
Participant:

(Sign Name)

Name: [ ]

Address: The most recent address reflected in the Company’s records

[Management Incentive Unit Agreement of Foundation Technology Worldwide LLC Participant Signature Page]
RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement (this “Agreement”) is made and entered into as of [_____] by and between Foundation Technology Worldwide LLC (the “Company”) on its own behalf and on behalf of its Affiliates (defined below), as may exist from time to time, and [_____] (“Participant”). Capitalized terms used in this Agreement but not otherwise defined herein shall have their respective meanings set forth in Participant’s Award Agreement.

1. **Mutual Agreement.** Participant acknowledges the importance to the Company and its Affiliates of protecting their Confidential Information and other legitimate business interests, including the valuable trade secrets and good will that they have developed or acquired. In consideration of Participant’s Employment, Participant’s Award and other good and valuable consideration, the receipt and sufficiency of which Participant hereby acknowledges, Participant agrees that the following restrictions on Participant’s activities during and after Employment are reasonable and necessary to protect the legitimate interests of the Company.

2. **Confidentiality.**
   
   2.1. Participant agrees that all Confidential Information which Participant creates or to which Participant has access as a result of Participant’s Employment and other associations with the Company or any of its Affiliates is and will remain the sole and exclusive property of the Company and its Affiliates. Participant agrees that, except as required for the proper performance of Participant’s regular duties for the Company, as expressly authorized in writing in advance by a duly authorized officer of the Company, or as required by applicable law, Participant will never, directly or indirectly, use or disclose any Confidential Information. Participant understands and agrees that this restriction will continue to apply after the termination of Participant’s Employment for any reason. For the avoidance of doubt, nothing in this Agreement limits, restricts or in any other way affects Participant’s communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity. Participant will not be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (b) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Participant may be held liable if Participant unlawfully access trade secrets by unauthorized means.

   2.2. Participant agrees that all documents, records and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company or any of its Affiliates, and any copies, in whole or in part, thereof (the “Documents”), whether or not prepared by Participant, will be the sole and
exclusive property of the Company. Participant agrees to safeguard all Documents and to surrender to the Company, at the time Participant’s Employment terminates or at such earlier time or times as an authorized officer of the Company may specify, all Documents then in Participant’s possession or control. Participant also agrees to disclose to the Company, at the time Participant’s Employment terminates or at such earlier time or times as an authorized officer of the Company may specify, all passwords necessary or desirable to obtain access to, or that would assist in obtaining access to, any information which Participant has password-protected on any computer equipment, network or system of the Company or any of its Affiliates.

3. **Assignment of Intellectual Property Rights.** Participant agrees to promptly and fully disclose all Intellectual Property to the Company. Participant hereby assigns and agrees to assign to the Company (or as otherwise directed by the Company) Participant’s full right, title and interest in and to all Intellectual Property. Participant agrees to execute any and all applications for domestic and foreign patents, copyrights or other proprietary rights and to do such other acts (including the execution and delivery of instruments of further assurance or confirmation) requested by the Company to assign the Intellectual Property to the Company (or as otherwise directed by the Company) and to permit the Company to enforce any patents, copyrights or other proprietary rights to the Intellectual Property. Participant will not charge the Company for time spent in complying with these obligations. All copyrightable works that Participant creates during Employment with the Company will be considered “work made for hire” and will, upon creation, be owned exclusively by the Company.

4. **Restricted Activities.**

4.1. While Participant is employed by the Company and during the eighteen (18)-month period immediately following the date of termination of Participant’s Employment (the “Restricted Period”), Participant agrees to not, directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, co-venturer or otherwise, engage in the Business in any geographic area in which the Company or any of its Affiliates engage in the Business or are actively planning to engage in the Business during Participant’s Employment or, with respect to the portion of the Restricted Period that follows termination of Participant’s Employment, at the time of such termination (the “Restricted Area”), or undertake any planning to do any of the foregoing anywhere in the Restricted Area. Specifically, but without limiting the foregoing, during the Restricted Period, Participant agrees not to work or provide services, in any capacity, anywhere in the Restricted Area, whether as an employee, independent contractor or otherwise, whether with or without compensation, to any Person that is engaged in the Business; provided that notwithstanding the foregoing, that for purposes of this Agreement, Participant may engage in (i) owning, directly or indirectly, solely as an investment, up to five percent (5%) of any class of securities of any company (whether public or private) that is competitive or substantially similar to the Business; (ii) owning a passive equity interest in a private debt or equity investment fund in which Participant does not have the ability to control or exercise any managerial influence over such fund; or (iii) any activity consented to in advance in writing by the Company.
4.2. During the Restricted Period, Participant agrees to not, directly or indirectly, (a) solicit or encourage any customer, vendor, supplier or other business partner of the Company or any of its Affiliates to terminate or diminish its relationship with any of them; or (b) seek to persuade any customer, such vendor, supplier or other business partner, or any prospective customer, vendor, supplier or other business partner of the Company or any of its Affiliates, to conduct with anyone else any business or activity which such customer, vendor, supplier or other business partner conducts, or such prospective customer, vendor, supplier or other business partner could conduct, with the Company or any of its Affiliates; provided that these restrictions will apply (y) only with respect to those Persons who are or have been a business partner of the Company or any of its Affiliates at any time within the six (6)-month period immediately preceding the activity restricted by this Section 4.2 or whose business has been solicited on behalf of the Company or any of the Affiliates by any of their officers, employees or agents within such six (6)-month period, other than by form letter, blanket mailing or published advertisement, and (z) only if Participant has performed work for such Person during Participant’s Employment or been introduced to, or otherwise had contact with, such Person as a result of Participant’s Employment or other associations with the Company or any of its Affiliates or has had access to Confidential Information which would assist in Participant’s solicitation of such Person.

4.3. During the Restricted Period, Participant agrees to not, and to not assist any other Person to, directly or indirectly, (a) hire or engage, or solicit for hiring or engagement, any employee of the Company or any of its Affiliates or seek to persuade any such employee to discontinue employment or (b) solicit or encourage any independent contractor providing services to the Company or any of its Affiliates to terminate or diminish its relationship with any of them. For purposes of this Agreement, (i) an “employee” or an “independent contractor” of the Company or any of its Affiliates is any Person who was such at any time within the twelve (12)-month period immediately preceding the activity restricted by this Section 4.3 and (ii) an “independent contractor” means only a natural person independent contractor or an entity independent contractor controlled by a natural person providing services to the Company or any of its Affiliates. Notwithstanding the foregoing, for purposes of this Agreement, the placement of general advertisements that may be targeted to a particular geographic or technical area but that are not specifically targeted toward employees or independent contractors of the Company shall not be considered solicitation.

5. Nondisparagement. Subject to the third to last sentence of Section 2.1 of this Agreement, Participant agrees that he or she will not disparage or criticize the Company, its Affiliates, their business, their management or their products or services, and that Participant will not otherwise do or say anything that could materially disrupt the good morale of employees of the Company or any of its Affiliates or could materially harm the interests or reputation of the Company or any of its Affiliates.

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Enforcement of Covenants.

6.1. In signing this Agreement, Participant gives the Company assurance that Participant has carefully read and considered all of the restraints hereunder, has not relied on any agreements or representations, express or implied, that are not set forth expressly in this Agreement, and has signed this Agreement knowingly and voluntarily. Participant agrees that these restraints are necessary for the reasonable and proper protection of the Company and its Affiliates, and are reasonable in respect to subject matter, length of time and geographic area. Participant further agrees that, were Participant to breach any of the covenants contained herein, the damage to the Company and its Affiliates would be irreparable. Participant therefore agrees that the Company, in addition to any other remedies available to it, will be entitled to preliminary and permanent injunctive relief against any breach or threatened breach by Participant of any such covenants, without having to post bond, together, to the extent the Company prevails in securing any such relief, with an award of its reasonable attorneys’ fees incurred in enforcing its rights hereunder.

6.2. So that the Company may enjoy the full benefit of the covenants contained in Section 4 above, Participant agrees that the Restricted Period will be tolled, and will not run, during the period of any breach by Participant of such covenants. In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, that provision will be deemed to be modified to permit its enforcement to the maximum extent permitted by law. Participant agrees that each of the Company’s Affiliates will have the right to enforce Participant’s obligations to that Affiliate under this Agreement. No claimed breach of this Agreement or other violation of law attributed to the Company or any of its Affiliates, or change in the nature or scope of Participant’s Employment or other relationship with the Company or any of its Affiliates, will operate to excuse Participant from the performance of Participant’s obligations under this Agreement.

7. Definitions. For purposes of this Agreement, the following definitions apply:

“Affiliates” has the meaning set forth in the Plan, provided that for purposes of Section 4 above, the term “Affiliate” shall exclude the TPG Investor, Intel, the Intel Investors (each as defined in the LLC Agreement) and all Affiliates of such entities other than the Company, its subsidiaries and any brother/sister entities acting in concert with the business or planning of the Company and its subsidiaries.

“Business” means (i) the business of security solutions related to computers, mobile devices, and networks, providing internet security products and services and/or (ii) any other business that the Company or any of its Affiliates is engaged in or is actively planning to be engaged in, during Participant’s Employment or, with respect to the portion of the Restricted Period that follows termination of Participant’s Employment, at the time of such termination.
“Confidential Information” means any and all information of the Company or any Affiliate of the Company which is not generally known by the public, including without limitation information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company or any Affiliate of the Company, unless and to the extent that any such information (i) becomes generally known to and available for use by the public other than as a result of Participant’s acts or omissions, or (ii) was properly known to Participant, without restriction, prior to disclosure by the Company.

“Intellectual Property” means inventions, discoveries, developments, improvements, methods, processes, procedures, plans, projects, systems, techniques, strategies, information, compositions, works, concepts and ideas, or modifications or derivatives of any of the foregoing (whether or not patentable or copyrightable or constituting trade secrets) (collectively, “Inventions”) conceived, made, created, developed or reduced to practice by Participant (whether alone or with others, whether or not during normal business hours or on or off Company premises) during Participant’s Employment that relate either to the business of the Company or any of its Affiliates or to any prospective activity of the Company or any of its Affiliates or that result from any work performed by Participant for the Company or any of its Affiliates or that make use of Confidential Information or any of the equipment or facilities of the Company or any of its Affiliates.

8. **Compliance with Other Agreements and Obligations.** Participant represents and warrants that Participant’s Employment with the Company and the execution and performance of this Agreement will not breach or be in conflict with any other agreement to which Participant is a party or is bound, and that Participant is not now subject to any covenants against competition or similar covenants or other obligations to third parties or to any court order, judgment or decree that would affect the performance of Participant’s obligations hereunder or Participant’s duties and responsibilities to the Company. Participant will not disclose to or use on behalf of the Company or an Affiliate, or induce the Company or any of its Affiliates to possess or use, any confidential or proprietary information of any previous employer or other third party without that party’s consent.

9. **Entire Agreement; Severability; Modification.** This Agreement sets forth the entire agreement between Participant and the Company, and supersedes all prior and contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof; provided, however, that this Agreement shall not supersede any effective assignment of any invention or other intellectual property to the Company or any of its Affiliates and shall not constitute a waiver by the Company or any of its Affiliates of any right that any of them now has or may now have under any agreement imposing obligations on Participant with respect to confidentiality, non-competition, non-solicitation of employees, independent contractors or like obligations. The provisions of this Agreement are severable. This Agreement may not be modified or amended, and no breach will be deemed to be waived, unless agreed to in writing by Participant and an expressly authorized officer of the Company. Provisions of this Agreement will survive any termination if so provided in this Agreement or if necessary or desirable to accomplish the purpose of other surviving provisions, including, without limitation, Sections 2-7.
10. **Assignment.** The Company may assign its rights and obligations under this Agreement without Participant’s consent to any of its Affiliates or to any Person with whom the Company will hereafter effect a reorganization, consolidate or merge, or to whom the Company will hereafter transfer all or substantially all of its properties or assets. This Agreement will inure to the benefit of and be binding upon Participant and the Company, and each of their respective successors, executors, administrators, heirs and permitted assigns.

11. **At-Will Employment.** Participant acknowledges that this Agreement is not meant to constitute a contract of employment for a specific duration or term, and that Participant’s employment with the Company is at-will. The Company and Participant will each retain the right to terminate Participant’s employment at any time, with or without notice or cause.

12. **Choice of Law.** This is a Delaware contract and will be governed by and construed in accordance with the laws of the State of Delaware, without regard to any conflict of laws principles that could result in the application of the laws of another jurisdiction. Participant agrees to submit to the exclusive jurisdiction of the courts of and in the State of Delaware in connection with any dispute arising out of this Agreement.
Intending to be legally bound hereby, the parties have signed this Agreement as of the day and year written above.

**Company:**

FOUNDATION TECHNOLOGY WORLDWIDE LLC

By:

Name: [                ]

Title: [                ]

[Company Signature Page to Restrictive Covenant Agreement]
Participant:

Name: [                ]

[Participant Signature Page to Restrictive Covenant Agreement]
Exhibit 10.29

FOUNDATION TECHNOLOGY WORLDWIDE LLC
2017 MANAGEMENT INCENTIVE PLAN
RSU AGREEMENT
(General Form)

THIS RSU AGREEMENT (this “Award Agreement”), dated [ ] (the “Grant Date”), is made pursuant to the Foundation Technology Worldwide LLC 2017 Management Incentive Plan, as amended from time to time (the “Plan”), and is entered into by and between Foundation Technology Worldwide LLC, a Delaware limited liability company (the “Company”) and [ ] (“Participant”). Capitalized terms used in this Award Agreement but not otherwise defined herein shall have their respective meanings set forth in the Plan.

THE PARTIES HERETO AGREE AS FOLLOWS:

1. Award. Pursuant to the Plan, and on the terms and subject to the conditions set forth in this Award Agreement, the Company hereby grants to Participant an Award of RSUs (the “Award”), giving Participant a conditional right to receive, without payment but subject to the conditions and limitations set forth in this Agreement, [ ] Class A Units of the Company (or an amount in cash based on the value of such Class A Units, as set forth in Section 5).

2. Definitions. For purposes of this Award Agreement, the following terms shall have the following meanings:

(a) “Cause” means (i) gross negligence or willful misconduct in connection with the performance of duties with respect to (A) Participant’s Employment or (B) Participant’s duties under any employment or similar agreement (including an offer letter) with the Company or any of its Affiliates; (ii) Participant’s commission of (or pleading guilty or pleading no contest or nolo contendere to) a felony or other crime involving moral turpitude; (iii) the performance by Participant of any act or acts of fraud, disloyalty or dishonesty in connection with or relating to the business of the Company or any of its Affiliates; (iv) material breach of any restrictive covenant relating to noncompetition or material breach of any other restrictive covenant applicable to Participant in favor of the Company or any of its Affiliates (“Restrictive Covenants”); or (v) a material violation of the written policies or procedures of the Company or of any of its Affiliates or Participant’s causing substantial harm to the business reputation of any of them. Notwithstanding the foregoing, if Participant is party to an individual employment, severance-benefit, change-in control or similar agreement (including an offer letter) with the Company or any of its Affiliates (other than Intel Corporation) that contains a definition of “Cause” (or a correlative term), such definition will apply in lieu of the definition set forth above during the term of such agreement.

(b) [ ]
“Good Reason” means (A) if Participant is party to an employment, severance-benefit, change-in-control or similar agreement (including an offer letter) with the Company or any Affiliate of the Company (other than Intel Corporation) that contains a definition of “Good Reason,” the definition set forth in such agreement for so long as such agreement is in effect; otherwise it shall mean, in each case, without Participant’s consent (B) (i) a material breach of Participant’s employment agreement, if any, by the Company or any Affiliate of the Company (other than Intel Corporation), (ii) a material diminution of Participant’s duties, responsibilities or status (except to the extent such diminution results solely from a Change in Control in which the Company becomes a subsidiary of another entity (or substantially all of the assets of the Company are otherwise combined with the assets of the acquirer)); provided that a change in Participant’s title or a change in the individual to whom or entity to which he or she reports shall not, in and of itself, constitute “Good Reason”, (iii) material reduction by the Company or any Affiliate of the Company in Participant’s base salary, unless related to a broad reduction applying to all similarly-situated employees, or (iv) the relocation of Participant’s principal place of business by more than fifty (50) miles. In all cases, an event or condition shall not constitute “Good Reason” unless (x) within thirty (30) days of the occurrence of the event or condition Participant believes constitutes Good Reason Participant provides the Company with a written notice (a “Good Reason Notice”) that specifically explains the basis for Participant’s belief that facts constituting Good Reason exist, (y) in the case of any of the above events which is capable of being cured within thirty (30) days of the Company’s receipt of the Good Reason Notice, the Company fails to cure (or cause to be cured) the applicable event or condition within thirty (30) days after the Company’s receipt of the Good Reason Notice, and (z) Participant actually terminates his or her Employment within sixty (60) days after the Company’s receipt of the Good Reason Notice.

3. Cessation of Employment.

(a) Termination for Cause. In the event that Participant’s Employment is terminated for Cause (or Participant voluntarily terminates his or her Employment at a time when the Company or any of its Affiliates could terminate Participant for Cause) or upon the material violation of an applicable Restrictive Covenant, each portion of the Award (whether vested or unvested) and any and all Class A Units previously delivered thereunder shall be immediately forfeited for no consideration and Participant shall be required to repay to the Company, in cash and upon demand, the proceeds resulting from any sale or other disposition (including to the Company or any of its Affiliates) of Class A Units issued or issuable upon the vesting of the Award.

(b) Cessation of Employment other than for Cause. Except as set forth in Section 3(b) or Section 3(c), any unvested portion of the Award shall be automatically forfeited upon the termination of Participant’s Employment for any reason other than for Cause. Notwithstanding anything to the contrary, upon and following the termination of Participant’s Employment for any reason other than for Cause or upon violation of a Restrictive Covenant, as described in Section 4(a) of this Award Agreement, any and all Class A Units received in respect of the Award will be subject to the repurchase provisions applicable to Management Incentive Units under Section 13.1(a) of the LLC Agreement.
4. **Delivery of Class A Units or Cash.** The Company shall, as soon as practicable following the vesting of any portion of the Award (but in no event later than thirty (30) days following the date on which the relevant portion of the Award vests), effect delivery of the Class A Units subject to such vested portion of the Award to Participant; provided, that if Participant becomes vested in any portion of the Award as a result of Participant’s termination of Employment without Cause or resignation for Good Reason in accordance with Section 3(c), then in lieu of delivery of the Class A Units subject to such portion of the Award, the Company may pay to Participant an amount in cash equal to the Fair Market Value of the Class A Units underlying such portion on the date Participant’s Employment terminates.

5. **Representations, Warranties, Covenants, and Acknowledgments of Participant.** Participant hereby represents, warrants, covenants, acknowledges and agrees that:

   (a) **Investment.** Participant is acquiring the Award for Participant’s own account, and not for the account of any other Person. Participant is acquiring the Award for investment and not with a view to distribution or resale thereof except in compliance with applicable laws regulating securities.

   (b) **Relation to the Company.** Participant is presently an Employee of the Company or one of its Subsidiaries, and in such capacity has become personally familiar with the business of the Company and/or its Subsidiaries.

   (c) **Access to Information.** Participant has had the opportunity to ask questions of, and to receive answers from, the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial conditions, and results of operations of the Company and its Affiliates.

   (d) **Registration.** Participant understands that the neither the Award nor the Class A Units underlying the Award have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or any applicable securities law, and that, subject to the further restrictions in the LLC Agreement, neither the Award nor the underlying Class A Units can be transferred by Participant unless such transfer is registered under the Securities Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register the transfer of the Award or the Class A Units under the Securities Act or any applicable securities law. The Company has made no representations, warranties, or covenants whatsoever as to whether any exemption from the Securities Act or any applicable securities law, including, without limitation, any exemption for limited sales in routine brokers’ transactions pursuant to Rule 144 of the Securities Act, will be available. If an exemption under Rule 144 is available at all, it will not be available until at least one year from issuance of the Award and then not unless (a) a public trading market then exists in Class A Units (or a successor security thereto); (b) adequate information as to the Company’s financial and other affairs and operations is then available to the public; and (c) all other terms and conditions of Rule 144 have been satisfied.
(e) **Public Trading.** None of the Company’s equity securities are presently publicly-traded, and the Company has made no representations, covenants or agreements as to whether there will be a public market for any of its securities.

(f) **Tax Advice.** The Company has made no warranties or representations to Participant with respect to the income tax consequences of the transactions contemplated by this Award Agreement, and Participant is in no manner relying on the Company or its representatives for an assessment of such tax consequences.

(g) **One-Time Award.** The Award represents a one-time, discretionary award and shall not in any way be considered as part of Participant’s employment compensation, wages, entitlements, or any other similar compensation or benefits plan or scheme. Eligibility for awards under the Plan are determined by the Administrator in its sole discretion and eligibility for, or receipt of, an award in a certain fiscal year does not imply or guarantee entitlement to an award in any future fiscal years.

6. **Binding Effect.** Subject to the limitations set forth in this Award Agreement, the Plan and the LLC Agreement (including, without limitation, limitations on transfer), this Award Agreement shall be binding upon, and inure to the benefit of, the executors, administrators, heirs, legal representatives, successors and assigns of the parties hereto.

7. **Taxes.**

   (a) **Withholding.** The Administrator will make such provision for the withholding of taxes as it deems necessary under applicable law; provided that Participant will make arrangements satisfactory to the Company (or an applicable Affiliate of the Company, if such Affiliate is involved in the administration of the Plan) for the payment and satisfaction of any income tax, social security tax, payroll tax, social taxes, applicable national or local taxes, or payment on account of other tax related to withholding obligations that arise by reason of granting, settling or vesting of RSUs or sale of Class A Units delivered in settlement of vested RSUs (whichever is applicable). If Participant does not make arrangements satisfactory to the Company (or an applicable Affiliate of the Company, if such Affiliate is involved in the administration of the Plan) for the payment and satisfaction of such taxes, the Administrator may, in its discretion, satisfy such taxes by withholding a number of Class A Units that would otherwise be issued under the Award that the Administrator determines has a Fair Market Value sufficient to satisfy such tax withholding obligations. Except to the extent the Administrator permits Participant to pay by other means, Participant shall remit cash in an amount sufficient to satisfy such taxes. The Company will not be required to issue or lift any restrictions on Class A Units delivered pursuant to Participant’s RSUs or to recognize any purported transfer of Class A Units until Participant’s obligations hereunder are satisfied.

   (b) **Section 409A.**

      (i) The Award is intended to be exempt from the rules of Section 409A and shall be construed accordingly. The Award may be modified at any time, in the
Administrator’s discretion, so as to increase the likelihood of compliance with the rules of Section 409A as determined by the Administrator in its sole discretion. Each payment under this Award shall be treated as a “separate payment” under Section 409A.

(ii) All references in this Award Agreement to a termination of Employment or similar or correlative references shall be construed to require a “separation from service” (as defined in Treasury regulation 1.409A-1(h)) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Treasury regulation Section 1.409A-1(h)(3).

(iii) If Participant is deemed on the date of Participant’s termination of Employment to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then, with respect to any payment that is considered nonqualified deferred compensation under Section 409A, to the extent applicable, payable on account of a “separation from service,” such payment will be made or provided on the date that is the earlier of (i) the expiration of the six-month period measured from the date of such “separation from service” and (b) the date of Participant’s death (the “Delay Period”). Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 8(b)(iii) will be paid on the first business day following the expiration of the Delay Period in a lump sum.

8. Data Privacy. The Company and Participant’s employer hereby notify Participant of the following in relation to Participant’s personal data and the collection, processing and transfer of such data in relation to the Award and Participant’s participation in the Plan:

(a) the collection, processing and transfer of Participant’s personal data is necessary for the Company’s administration of the Plan and Participant’s participation in the Plan, and Participant’s denial and/or objection to the collection, processing and transfer of personal data may affect Participant’s ability to participate in the Plan. As such, Participant voluntarily acknowledges, consents and agrees (where required under applicable law) to the collection, use, processing and transfer of personal data as described herein.

(b) The Company and Participant’s employer hold certain personal information about Participant, including (but not limited to) Participant’s name, home address and telephone number, date of birth, social security number or other employee identification number, salary, nationality, job title, any equity interests or directorships held in the Company, details of all equity awards or any other entitlement to equity awarded, canceled, purchased, vested, exercised, unvested or outstanding in Participant’s favor for the purpose of managing and administering the Plan (collectively, the “Data”). The Data may be provided by Participant or collected, where lawful, from third parties, and the Company and Participant’s employer will process the Data for the exclusive purpose of implementing, administering and managing Participant’s participation in the Plan. Processing of the Data will take place through electronic and non-electronic means according to logics and procedures strictly correlated to the purposes for which the Data is collected and with confidentiality and security provisions as set forth by applicable laws and regulations in Participant’s country of residence. Data processing operations will be performed in a manner that minimizes the use of personal and identification data when
such operations are unnecessary for the processing purposes sought. The Data will be accessible within the Company’s organization only by those persons requiring access for purposes of the implementation, administration and operation of the Plan and for Participant’s participation in the Plan.

(c) The Company and Participant’s employer will transfer Data as necessary for the purpose of implementation, administration and management of Participant’s participation in the Plan, and the Company and/or Participant’s employer may each further transfer Data to any third parties assisting the Company in the implementation, administration and management of the Plan. These recipients may be located in the European Economic Area, the United States or elsewhere throughout the world. Participant hereby authorizes (where required under applicable law) the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for purposes of implementing, administering and managing Participant’s participation in the Plan, including any requisite transfer of such Data as may be required for the administration of the Plan and/or the subsequent holding of equity interests on Participant’s behalf to a broker or other third party with whom Participant may elect to deposit any equity interest acquired pursuant to the Plan, subject to the limitations set forth in the Plan, the LLC Agreement and this Award Agreement. Participant may, at any time, exercise Participant’s rights provided under applicable personal data protection laws (if any), which may include the right to (i) obtain confirmation as to the existence of the Data, (ii) verify the content, origin and accuracy of the Data, (iii) request the integration, update, amendment, deletion, or blockage (for breach of applicable laws) of the Data, and (iv) oppose, for legal reasons, the collection, processing or transfer of the Data that is not necessary or required for the implementation, administration and/or operation of the Plan and Participant’s participation in the Plan. Participant may seek to exercise these rights by contacting Participant’s local human resources manager.

9. **Survival of Representations and Warranties and Restrictive Covenants.** The representations, warranties and covenants contained in Section 6 hereof shall survive until Participant and his or her Permitted Transferees no longer hold the Award or any of the Class A Units issued hereunder.

10. **Unit Certificate Restrictive Legends.** The certificates evidencing any Class A Units that are certificated may bear such restrictive legends as the Company and/or the Company’s counsel may deem necessary or advisable under applicable law or pursuant to this Award Agreement to evidence the restrictions applicable to such Class A Units.

11. **Notices.** All notices required or permitted hereunder shall be in writing deemed effectively given when delivered in person or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed to the other party hereto at the address shown beneath his or her or its respective signature to this Award Agreement, or at such other address or addresses as either party shall designate to the other in writing.

12. **Successors and Assigns.** The rights, duties, and obligations under this Award Agreement and the Plan may not be assigned by Participant or the Company, except that this Award
Agreement shall be assignable by the Company to any successor entity, including an entity acquiring all, or substantially all, of the assets of the Company. The provisions of this Award Agreement shall be binding on any such assignee.

13. **Entire Agreement; Amendments.** This Award Agreement, the Plan, and the LLC Agreement, constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, including, without limitation, any offer letter or other document or communication to the extent related to any long-term incentive awards of the Company or its Affiliates or the terms thereof. There are no agreements, understandings, specific restrictions, warranties, or representations relating to said subject matter between the parties other than those set forth herein or herein provided for. Without limiting the generality of the foregoing, Participant expressly acknowledges and agrees that (a) to the extent of the Fair Market Value (determined as of the Grant Date) of the Class A Units underlying the Award, he or she has elected to receive the Award in lieu of a Cash Award of equal value, (b) none of the Company, the Intel Investors, the TPG Investors or any Affiliate of any of them will have any liability with respect to such election other than the Company’s obligations as expressly set forth herein, and (c) the TPG Investors, the Intel Investors and their Affiliates are intended third party beneficiaries of this sentence. This Award Agreement may be amended only in accordance with Section 10 of the Plan.

14. **Waivers.** The failure of a party to insist upon strict performance of any provision of this Award Agreement in any one or more instances shall not be construed as a waiver or relinquishment of the right to insist upon strict compliance with such provision in the future. In the event of any ambiguity in this Award Agreement or any matters as to which this Award Agreement is silent, the Plan will govern.

15. **Invalidity.** In the event that any one or more of the provisions of this Award Agreement or any word, phrase, clause, sentence, or other portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Award Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable laws.

16. **Number; Titles.** As used in this Award Agreement, the singular form shall include, if appropriate, the plural. The headings used in this Award Agreement are solely for the convenience and reference of the parties and are not intended to be descriptive of the entire contents of any paragraph and shall not limit or otherwise affect any of the terms, provisions, or construction thereof.

17. **Governing Law.** The validity, construction and effect of this Award Agreement, and of any determinations or decisions made by the Administrator relating to this Award Agreement, and the rights of any and all Persons having, or claiming to have, any interest under this Award Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law. Any suit with respect to this Award Agreement will be brought in the federal or state courts in the districts which include the State of Delaware, and Participant agrees and submits to the personal jurisdiction and venue thereof.
18. **Counterparts.** This Award Agreement may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or electronic means (including “pdf”), and each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

19. **Accession to LLC Agreement.** By execution of this Award Agreement, Participant hereby agrees, in respect of any Class A Units delivered to him or her under this Award Agreement, to be bound by the terms of the LLC Agreement as a Member, and such terms are hereby incorporated by reference as if set out herein in full, except as provided herein. Participant further agrees that, notwithstanding anything to the contrary in the LLC Agreement, any Class A Units delivered under this Award shall entitle Participant to the rights of, and be subject to the terms, conditions, and obligations applicable to, Management Incentive Units for purposes of Sections 11-14 of the LLC Agreement and shall be deemed to be Management Incentive Units (and not Class A Units) for all purposes of such Sections; provided that for purposes of Section 13.1(a) of the LLC Agreement the Company’s call rights following Participant’s termination of Employment (or, if applicable, following Participant’s commencement of employment or other services to a Competitor (as defined in the LLC Agreement)) shall arise at the later of (x) such termination (or, if applicable, the date on which the Company obtained actual knowledge of the commencement of such employment or other service relationship) or (y) the date that is six (6) months plus one (1) day following the date on which any Class A Units were delivered hereunder. Participant acknowledges and agrees that he or she will not be treated as an Affiliate of the TPG Investor for purposes of Section 12.2 of the LLC Agreement. For the avoidance of doubt, this Section 20 shall survive the termination of this Award Agreement.

20. **Power of Attorney.** Participant hereby irrevocably constitutes and appoints the Administrator (or its designee) with full power of substitution, acting jointly or severally, as his or her attorney-in-fact and agent to sign, execute and deliver, in Participant's name and on his or her behalf, all or any such agreement, deeds, instruments, documents and/or any counterpart thereof or certificates or to take any such action as it deems necessary from time to time or as is required under any applicable law to admit Participant as a Member of the Company or to conduct the business of the Company, including (without limitation) the power and authority to sign, execute and deliver (or attach signature pages to) (i) the LLC Agreement, (ii) any amendment to the LLC Agreement adopted in accordance with its terms, (iii) any agreements, deeds, instruments or documents reasonably necessary to satisfy Participant’s obligations under Section 13 of the LLC Agreement (iv) any proxy related to the 280G Vote (as defined in the LLC Agreement) authorized by Section 20.3 of the LLC Agreement, under which the Chief Executive Officer of the Company or a substitute appointed by the TPG Investors may approve or disapprove certain compensatory payments subject to Section 280G of the Code or (v) such documents as the Administrator deems necessary in good faith to effectuate the customary lock-up following a Public Offering as set forth in Section 11.1(e) of the LLC Agreement. This power of attorney is given to secure the obligations of Participant hereunder and deemed coupled with an interest of the Administrator and is irrevocable.
Further Representations and Acknowledgements of Participant.

(a) Participant hereby represents that he or she has read the Plan and is familiar with the Plan’s terms. Participant hereby acknowledges that he or she has carefully read this Award Agreement and agrees, on behalf of himself or herself and on behalf of his/her beneficiaries, estate and permitted assigns, to be bound by all of the provisions set forth herein and that the Award and Class A Units are subject to all of the terms and provisions of this Award Agreement and of the Plan, as the Plan may be amended in accordance with its respective terms. In the event of any conflict between the terms of this Award Agreement and the Plan, the Plan shall control.

(b) Participant acknowledges that nothing in this Award Agreement (including exhibits hereto) alters the nature of employment with Company or any Affiliate of the Company. Participant acknowledges having been afforded a reasonable opportunity to consult with financial or legal advisors regarding the consequences of Participant’s acceptance of the grant on the terms and conditions set forth in this Award Agreement.

[Remainder of the page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have executed this Award Agreement on the day and year first above written.

Foundation Technology Worldwide LLC
a Delaware limited liability company

By: ____________________________________________________________________________________

Name: [            ]
Title: [            ]

Address:
Foundation Technology Worldwide LLC
[            ]
Attention: General Counsel

With copies (not constituting notice) to:
[            ]

and

Ropes & Gray LLP
The Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Alfred Rose and Michael Roh
Email: alfred.rose@ropesgray.com and
michael.roh@ropesgray.com

[RSU Agreement of Foundation Technology Worldwide LLC Company Signature Page]
Participant:

(Sign Name)

Name: [            ]

Address: The most recent address reflected in the Company’s records

[RSU Agreement of Foundation Technology Worldwide LLC Vesting Schedule]
1. DEFINED TERMS

Exhibit A, which is incorporated herein by reference, defines certain terms used in the Plan and includes certain operational rules related to those terms.

2. PURPOSE

The Plan has been established to advance the interests of the Company by providing for the grant to Participants of Stock and Stock-based Awards.

3. ADMINISTRATION

The Administrator shall administer the Plan and shall have discretionary authority, subject only to the express provisions of the Plan, to interpret the Plan and any Award Agreements; to determine eligibility for and grant Awards; to determine, alter or amend the exercise price, base value from which appreciation is measured, or purchase price, if any, applicable to any Award; to determine, modify, accelerate or waive the terms and conditions of any Award; to determine the form of settlement of Awards (whether in cash, shares of Stock, other Awards or other property); to prescribe forms, rules and procedures relating to the Plan and Awards; and to otherwise do all things necessary or desirable to carry out the purposes of the Plan or any Award. Determination made under the Plan and/or with respect to Awards need not be uniform among Participants. All determinations of the Administrator made with respect to the Plan or any Award are conclusive and shall bind all persons.

4. LIMITS ON AWARDS UNDER THE PLAN

(a) Number of Shares. Subject to adjustment as provided in Section 7(b), the maximum number of shares of Stock that may be issued in satisfaction of Equity Awards under the Plan is ________ shares (the number of shares available under the Plan from time to time, the “Share Pool”). The Share Pool shall increase annually on the first day of each fiscal year beginning with the first day of the second fiscal year beginning after the Date of Adoption and ending with the first day of the tenth fiscal year beginning after the Date of Adoption, in each case, with such increase equal to the lesser of (i) 5% of the sum of (x) the number of shares of Stock, plus (y) the number of FTW units (excluding those held by the Company), in each case, outstanding as of the last day of the preceding fiscal year, and (ii) the amount determined by the Board. Up to ________ shares of Stock in the Share Pool may be issued in satisfaction of ISOs, but nothing in this Section 4(a) will be construed as requiring that any, or any fixed number of, ISOs be granted under the Plan. For purposes of this Section 4(a), the number of shares of Stock issued in satisfaction of Equity Awards will be determined (i) by reducing the Share Pool at the time an applicable Award is issued by the maximum number of shares of Stock that can be delivered under an Award, even if such Award is denominated in a lesser number of Shares; (ii) by reducing the Share Pool at the time SARs are issued by the full number of shares covered by a SAR any portion of which is settled in Stock (and not only the number of shares of Stock delivered in settlement); (iii) after giving effect to clauses (i) and (ii) when an Award is issued, by subsequently
increasing the Share Pool by the number of shares of Stock “net” withheld by the Company in payment of the exercise price or purchase price of an Award or in satisfaction of tax withholding requirements with respect to an Award, and (iv) after giving effect to clauses (i) and (ii) when an Award is issued (to the extent applicable), by increasing the Share Pool by any shares of Stock underlying any portion of an Award issued under this Plan or any portion of an award issued under the Prior Plan (or Class A Units or Management Incentive Units of FTW subject to an award under the Prior Plan) that is settled in cash or that expires, becomes unexercisable, terminates or is forfeited to or repurchased by the Company without the issuance (or retention, in the case of Restricted Stock or Unrestricted Stock) of Stock. For the avoidance of doubt, the Share Pool will (i) not be decreased by awards or shares of Stock granted or issued under the Prior Plan and (ii) not be increased by any shares of Stock (or any shares of Common Stock exchanged for Class A Units or Management Incentive Units of FTW) delivered under the Plan or the Prior Plan that are subsequently repurchased using proceeds directly attributable to Stock Option exercises. The limits set forth in this Section 4(a) will be construed to comply with the applicable requirements of Section 422.

(b) Substitute Awards. The Administrator may grant Substitute Awards under the Plan. To the extent consistent with the requirements of Section 422 and the regulations thereunder and other applicable legal requirements (including applicable stock exchange requirements), shares of Stock issued in respect of Substitute Awards will be in addition to and will not reduce the Share Pool. Notwithstanding the foregoing or anything in Section 4(a) to the contrary, if any Substitute Award is settled in cash or expires, becomes unexercisable, terminates or is forfeited to or repurchased by the Company without the issuance (or retention, in the case of Restricted Stock or Unrestricted Stock) of Stock, the shares of Stock previously subject to such Award will not increase the Share Pool or otherwise be available for future issuance under the Plan. The Administrator will determine the extent to which the terms and conditions of the Plan apply to Substitute Awards, if at all, provided, however, that Substitute Awards will not be subject to the limits described in Section 4(d) below.

(c) Type of Shares. Stock issued by the Company under the Plan may be authorized but unissued Stock, treasury Stock or previously issued Stock acquired by the Company. The Company shall not be required to issue any fractional shares of Stock under the Plan and may make such rules for the treatment of fractional shares of Stock (or other securities issued in respect of an Award or portion thereof) as it deems appropriate (including, without limitation, rounding down the number of securities deliverable and, with due regard for Section 409A to the extent applicable and other applicable tax considerations, providing that a fractional security cannot be acquired until aggregated with other fractional securities such that a whole security is owned and/or exercisable).

(d) Director Limits. The maximum grant date fair value of Equity Awards granted to any Director in any fiscal year for his or her services as a Director, together with the aggregate value of all compensation granted or paid to any Director with respect to any fiscal year, including Awards granted under the Plan and cash fees or other compensation paid by the Company to such Director outside of the Plan, in each case, for his or her services as a Director during such fiscal year, may not exceed $600,000 in the aggregate, calculating the value of any Equity Awards based on the grant date fair value in accordance with the Accounting Rules, assuming maximum payout levels to the extent applicable and determined without regard to any deferrals in accordance with
any deferred compensation arrangement of the Company or any of its Affiliates. The limits in this Section 4(d) will not apply to an Award or shares of Stock granted pursuant to a Director’s election to receive an Award or shares of Stock in lieu of cash retainers or other fees, to the extent such Award or shares of Stock have a grant date fair value equal to the value of such cash retainers or other fees.

5. ELIGIBILITY AND PARTICIPATION

The Administrator will select Participants from among current and prospective Employees and Directors of, and consultants and advisors to, the Company and its Affiliates. Eligibility for ISOs is limited to individuals described in the first sentence of this Section 5 who are employees of the Company or of a “parent corporation” or “subsidiary corporation” of the Company as those terms are defined in Section 424 of the Code. Eligibility for Stock Options, other than ISOs, and SARs is limited to individuals described in the first sentence of this Section 5 who are providing direct services on the date of grant of the Award to the Company or to an Affiliate that would be described in the first sentence of Section 1.409A-1(b)(5)(iii)(E) of the Treasury Regulations.

6. RULES APPLICABLE TO AWARDS

(a) All Awards.

(1) Award Provisions. The Administrator will determine the terms and conditions of all Awards, subject to the limitations provided herein. No term of an Award shall provide for automatic “reload” grants of additional Awards upon the exercise of a Stock Option or SAR. By accepting (or, under such rules as the Administrator may prescribe, being deemed to have accepted) an Award, the Participant will be deemed to have agreed to the terms and conditions of the Award and the Plan. Notwithstanding any provision of the Plan to the contrary, Substitute Awards may contain terms and conditions that are inconsistent with the terms and conditions specified herein, as determined by the Administrator. Each Award will be granted pursuant to an applicable Award Agreement.

(2) Term of Plan. No Awards may be made after ten (10) years from the Date of Adoption, but previously granted Awards may continue beyond that date in accordance with their terms.

(3) Transferability. Neither ISOs nor, except as the Administrator otherwise expressly provides in accordance with the third sentence of this Section 6(a)(3), other Awards may be transferred other than by will or by the laws of descent and distribution. During a Participant’s lifetime, ISOs and, except as the Administrator otherwise expressly provides in accordance with the third sentence of this Section 6(a)(3), SARs and NSOs may be exercised only by the Participant. The Administrator may permit the gratuitous transfer (i.e., transfer not for value) of Awards other than ISOs, subject to applicable securities and other laws and such terms and conditions as the Administrator may determine.
(4) **Vesting; Exercisability.** The Administrator will determine the time or times at which an Award vests or becomes exercisable and the terms and conditions on which a Stock Option or SAR remains exercisable. Without limiting the foregoing, the Administrator may at any time accelerate the vesting and/or exercisability of an Award (or any portion thereof), regardless of any adverse or potentially adverse tax or other consequences resulting from such acceleration. Unless the Administrator expressly provides otherwise, however, the following rules will apply if a Participant’s Employment ceases:

(A) Except as provided in (B) and (C) below, immediately upon the cessation of the Participant’s Employment each Stock Option and SAR (or portion thereof) that is then held by the Participant or by the Participant’s permitted transferees, if any, will cease to be exercisable and will terminate and each other Award that is then held by the Participant or by the Participant’s permitted transferees, if any, to the extent not then vested will be forfeited.

(B) Subject to (C) and (D) below, each vested and unexercised Stock Option and SAR (or portion thereof) held by the Participant or the Participant’s permitted transferees, if any, immediately prior to the cessation of the Participant’s Employment, to the extent then exercisable, will remain exercisable for the lesser of (i) a period of three months following such cessation of Employment or (ii) the period ending on the latest date on which such Stock Option or SAR could have been exercised without regard to this Section 6(a)(4), and will thereupon immediately terminate.

(C) Subject to (D) below, each vested and unexercised Stock Option and SAR (or portion thereof) held by a Participant or the Participant’s permitted transferees, if any, immediately prior to the cessation of the Participant’s Employment due to his or her death or by the Company or an Affiliate due to his or her Disability, to the extent then exercisable, will remain exercisable for the lesser of (i) the one-year period ending on the first anniversary of such cessation of Employment or (ii) the period ending on the latest date on which such Stock Option or SAR could have been exercised without regard to this Section 6(a)(4), and will thereupon immediately terminate.

(D) All Awards (whether or not vested or exercisable) held by a Participant or the Participant’s permitted transferees, if any, immediately prior to the cessation of the Participant’s Employment will immediately terminate upon such cessation of Employment if the termination is for Cause or occurs in circumstances that in the determination of the Administrator would have constituted grounds for the Participant’s Employment to be terminated for Cause (in each case, without regard to the lapping of any required notice or cure periods in connection therewith).

(5) **Recovery of Compensation.** Subject to the terms of any applicable Award Agreement, the Administrator may cause any outstanding Award (whether or not vested or exercisable), the proceeds from the exercise or disposition of any Award or Stock acquired under any Award, and any other amounts received in respect of any Award or Stock acquired under any Award to be forfeited and disgorged to the Company (or its designated Affiliate), with interest and other related earnings, if the Participant to whom the Award was granted is not in compliance with any provision of the Plan or any applicable Award Agreement or any non-competition, non-solicitation, no-hire, non-disparagement, confidentiality, invention assignment, or other restrictive covenant by which he or she is bound. Subject to the terms of any applicable Award Agreement, each Award will be subject to any policy of the Company or any of its subsidiaries or Affiliates that provides for forfeiture, disgorgement, recoupment or clawback with respect to incentive
compensation that includes Awards under the Plan and will be further subject to forfeiture and disgorgement to the extent required by law or applicable stock exchange listing standards, including, without limitation, Section 10D of the Exchange Act. Subject to the terms of any applicable Award Agreement, each Participant, by accepting or being deemed to have accepted an Award under the Plan, agrees (or will be deemed to have agreed) to the terms of this Section 6(a)(5) and any clawback, recoupment or similar policy of the Company or any of its subsidiaries or Affiliates and further agrees (or will be deemed to have further agreed) to cooperate fully with the Administrator, and to cause any and all permitted transferees of the Participant to cooperate fully with the Administrator, to effectuate any forfeiture or disgorgement described in this Section 6(a)(5). Neither the Administrator nor the Company nor any other person, other than the Participant and his or her permitted transferees, if any, will be responsible for any adverse tax or other consequences to a Participant or his or her permitted transferees, if any, that may arise in connection with this Section 6(a)(5).

(6) Taxes. The grant of an Award and the issuance, delivery, vesting and retention of Stock, cash or other property under an Award are conditioned upon the full satisfaction by the Participant of all tax and other withholding requirements with respect to the Award. Subject to the terms of any applicable Award Agreement, the Administrator will prescribe such rules for the withholding of taxes and other amounts with respect to any Award as it deems necessary or appropriate. Subject to the terms of any applicable Award Agreement but without limitation to the foregoing, the Company or any of its Affiliates will have the authority and the right to deduct or withhold (by any means set forth herein or in an Award agreement), or require a Participant to remit to the Company, an Affiliate or a subsidiary of the Company, an amount sufficient to satisfy all U.S. and non-U.S. federal, state and local income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to participation in the Plan and legally applicable to the Participant and required by law to be withheld (including, any amount deemed by the Company, in its discretion, to be an appropriate charge to the Participant even if legally applicable to the Company or any of its Affiliates). The Administrator, in its sole discretion, may (but is not required to) hold back shares of Stock from an Equity Award, permit a Participant to tender previously-owned shares of Stock, in satisfaction of tax or other withholding requirements (but not in excess of the amount payable in respect of an Award based on maximum statutory withholding rates in the applicable jurisdiction(s), consistent with the Award being subject to equity accounting treatment under the Accounting Rules). Subject to the terms of any applicable Award Agreement, the Administrator may also permit or require a Participant to enter into a broker-assisted “same day sale” arrangement in satisfaction of tax or other withholding requirements, up to the amount payable in respect of an applicable portion of an Award based on maximum statutory withholding rates in the applicable jurisdiction(s). Any amounts withheld pursuant to this Section 6(a)(6) or any applicable Award Agreement will be treated as though such amounts had been made directly to the Participant. In addition, the Company may, to the extent permitted by law, deduct any such tax and other withholding amounts from any payment of any kind otherwise due to a Participant from the Company or an Affiliate.

(7) Dividend Equivalents. Subject to the terms of an applicable Award Agreement, the Administrator may provide for the payment of amounts (on terms and subject to conditions established by the Administrator) in lieu of cash dividends or other distributions with respect to Stock subject to an Award whether or not the holder of such Award is otherwise entitled to share in the actual dividend or distribution in respect of such Award; provided, however, that,
except as provided by the Administrator, (a) dividends or dividend equivalents relating to an Award that, at the dividend payment date, remains subject to a risk of forfeiture (whether service-based or performance-based) shall be subject to the same risk of forfeiture as applies to the underlying Award and (b) no dividends or dividend equivalents shall be payable with respect to Options or SARs. Any entitlement to dividend equivalents or similar entitlements will be established and administered either consistent with an exemption from, or in compliance with, the applicable requirements of Section 409A. Dividends or dividend equivalent amounts payable in respect of Awards that are subject to restrictions may be subject to such additional limitations or other restrictions as the Administrator may impose.

(8) Rights Limited. Nothing in the Plan or any Award will be construed as giving any person the right to be granted an Award or to continued Employment with the Company or any of its Affiliates or subsidiaries, or any rights as a stockholder except as to shares of Stock actually issued under the Plan. The loss of existing or potential profit in any Award will not constitute an element of damages in the event of a termination of a Participant’s Employment for any reason, even if the termination is in violation of an obligation of the Company or any of its Affiliates or subsidiaries to the Participant.

(9) Coordination with Other Plans. Shares of Stock and/or Awards under the Plan may be issued or granted in tandem with, or in satisfaction of or substitution for, other Awards under the Plan or awards made under other compensatory plans or programs of the Company or any of its Affiliates or subsidiaries. For example, but without limiting the generality of the foregoing, awards under other compensatory plans or programs of the Company or any of its Affiliates or subsidiaries may be settled in Stock (including, without limitation, Unrestricted Stock) under the Plan if the Administrator so determines, in which case the shares delivered will be treated as awarded under the Plan (and will reduce the Share Pool).

(10) Section 409A.

(A) Without limiting the generality of Section 11(b) hereof, each Award will contain such terms as the Administrator determines and will be construed and administered, such that the Award either qualifies for an exemption from the requirements of Section 409A or satisfies such requirements.

(B) Notwithstanding anything to the contrary in the Plan or any Award Agreement, the Administrator may unilaterally amend, modify or terminate the Plan or any outstanding Award, including but not limited to changing the form of the Award, if the Administrator determines that such amendment, modification or termination is necessary or desirable to avoid the imposition of an additional tax, interest or penalty under Section 409A.

(C) If a Participant is determined on the date of the Participant’s termination of Employment to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then, with regard to any payment that is considered nonqualified deferred compensation under the Plan or otherwise under Section 409A, to the extent applicable, payable on account of a “separation from service”, such payment will be made or provided on the date that is the earlier of (i) the first business day
following the expiration of the six-month period measured from the date of such “separation from service” and (ii) the date of the Participant’s death (the “Delay Period”). Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 6(a)(10)(C) (whether they would have otherwise been payable in a single lump sum or in installments in the absence of such delay) will be paid, without interest, on the first business day following the expiration of the Delay Period in a lump sum and any remaining payments due under the Award will be paid in accordance with the normal payment dates specified for them in the applicable Award Agreement.

(D) For purposes of Section 409A, each payment made under the Plan or any Award will be treated as a separate payment.

(E) With regard to any payment considered to be nonqualified deferred compensation under Section 409A, to the extent applicable, that is payable upon a change in control of the Company or other similar event, to the extent required to avoid the imposition of an additional tax, interest or penalty under Section 409A, no amount will be payable unless such change in control constitutes a “change in control event” within the meaning of Section 1.409A-3(i)(5) of the Treasury Regulations.

(b) Stock Options and SARs.

(1) Time and Manner of Exercise. Unless the Administrator expressly provides otherwise, no Stock Option or SAR will be deemed to have been exercised until the Administrator receives a notice of exercise in a form acceptable to the Administrator that is signed by the appropriate person and accompanied by the payment required under the Award. The Administrator may limit or restrict the exercisability of any Stock Option or SAR in its discretion, including in connection with any blackout periods, market limitations, Change in Control or other corporate transactions or events. Any attempt to exercise a Stock Option or SAR by any person other than the Participant will not be given effect unless the Administrator has received such evidence as it may require that the person exercising the Award has the right to do so.

(2) Exercise Price. The exercise price (or the base value from which appreciation is to be measured) per share of each Award requiring exercise must be no less than 100% (in the case of an ISO granted to a 10-percent stockholder within the meaning of Section 422(b)(6) of the Code, 110%) of the Fair Market Value of a share of Stock, determined as of the date of grant of the Award, or such higher amount as the Administrator may determine in connection with the grant.

(3) Payment of Exercise Price. Where the exercise of an Award (or portion thereof) is to be accompanied by a payment, payment of the exercise price must be made by cash or check acceptable to the Administrator or, if so permitted by the Administrator and if legally permissible, (i) through the delivery of previously acquired unrestricted shares of Stock, or the withholding of unrestricted shares of Stock otherwise issuable upon exercise, in either case that have a Fair Market Value equal to the exercise price; (ii) through a broker-assisted cashless exercise program acceptable to the Administrator; (iii) by other means acceptable to the Administrator; or (iv) by any combination of the foregoing permissible forms of payment. The delivery of previously acquired shares in payment of the exercise price under clause (i) above may be accomplished either by actual delivery or by constructive delivery through attestation of ownership, subject to such rules as the Administrator may prescribe.
4. **Maximum Term.** The maximum term of Stock Options and SARs must not exceed ten (10) years from the date of grant (or five years from the date of grant in the case of an ISO granted to a 10-percent stockholder described in Section 6(b)(2) above); provided that, notwithstanding anything in an applicable Award Agreement to the contrary, if a Participant is still holding an outstanding but unexercised NSO or SAR ten (10) years from the date of grant (or, in the case of an NSO or SAR with a maximum term of less than ten (10) years, such maximum term), is prohibited by applicable law or a written policy of the Company applicable to similarly situated employees from engaging in any open-market sales of Stock, and if at such time the Stock (or other securities received in respect of an Award or any portion thereof) is publicly traded (as determined by the Administrator), the maximum term of such Award will instead be deemed to expire on the thirtieth (30th) day following the date the Participant is no longer prohibited from engaging in such open market sales.

5. **No Repricing.** Except in connection with a corporate transaction involving the Company (which term includes, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares, in each case, determined consistent with the Accounting Rules) or as otherwise contemplated by Section 7 below, the Company may not, without obtaining stockholder approval, (i) amend the terms of outstanding Stock Options or SARs to reduce the exercise price or base value of such Stock Options or SARs, (ii) cancel outstanding Stock Options or SARs in exchange for Stock Options or SARs that have an exercise price or base value that is less than the exercise price or base value of the original Stock Options or SARs, or (iii) cancel outstanding Stock Options or SARs that have an exercise price or base value greater than the Fair Market Value of a share of Stock on the date of such cancellation in exchange for cash or other consideration.

7. **EFFECT OF CERTAIN TRANSACTIONS**

   (a) **Mergers, etc.** Except as otherwise expressly provided in an Award Agreement or by the Administrator (subject to any limitations set forth in the Award Agreement), the following provisions will apply in the event of a Change in Control:

   1. **Assumption or Substitution.** If the Change in Control is one in which there is an acquiring or surviving entity, the Administrator may provide for (i) the assumption or continuation of some or all outstanding Awards or any portion thereof or (ii) the grant of new awards in substitution therefor by the acquiror or survivor or an affiliate of the acquiror or survivor.

   2. **Cash-Out of Awards.** Subject to Section 7(a)(5) below, the Administrator may provide for payment (a “cash-out”), with respect to some or all Awards or any portion thereof (including only the vested portion thereof, with the unvested portion terminating as provided in subsection 7(a)(4) below), equal in the case of each applicable Equity Award or portion thereof to the excess, if any, of (i) the Fair Market Value of a share of Stock multiplied by the number of shares of Stock subject to the Award or such portion, minus (ii) the aggregate exercise or purchase price, if any, of such Award or such portion thereof (or, in the case of a SAR, the aggregate base...
value above which appreciation is measured), in each case, on such payment and other terms and subject to such conditions (which need not be the same as the terms and conditions applicable to holders of Stock generally) as the Administrator determines, including that any amounts paid in respect of such Award in connection with the Change in Control be placed in escrow or otherwise made subject to such restrictions as the Administrator deems appropriate. For the avoidance of doubt, if the per share exercise or purchase price (or base value) of an Equity Award or portion thereof is equal to or greater than the Fair Market Value of one share of Stock, such Award or portion may be cancelled with no payment due hereunder or otherwise in respect thereof.

(3) **Acceleration of Certain Awards.** Subject to Section 7(a)(5) below, the Administrator may provide that any Award requiring exercise will become exercisable, in full or in part, and/or that the issuance of any shares of Stock remaining issuable under any outstanding Award of Stock Units (including Restricted Stock Units and Performance Awards to the extent consisting of Stock Units) will be accelerated, in full or in part, in each case on a basis that gives the holder of the Award a reasonable opportunity, as determined by the Administrator, following the exercise of the Award or the issuance of the shares, as the case may be, to participate as a stockholder in the Change in Control.

(4) **Termination of Awards upon Consummation of Change in Control.** Except as the Administrator may otherwise determine, each Award will automatically terminate (and in the case of outstanding shares of Restricted Stock, will automatically be forfeited) immediately upon the consummation of the Change in Control, other than (i) any Award that is assumed, continued or substituted for pursuant to Section 7(a)(1) above, and (ii) any Cash Award that by its terms, or as a result of action taken by the Administrator, continues following the Change in Control.

(5) **Additional Limitations.** Any share of Stock and any cash or other property or other award delivered pursuant to Section 7(a)(1), Section 7(a)(2) or Section 7(a)(3) above with respect to an Award may, in the discretion of the Administrator, contain such restrictions, if any, as the Administrator deems appropriate in its sole discretion, including to reflect any performance or other vesting conditions to which the Award was subject and that did not lapse (and were not satisfied) in connection with the Change in Control (e.g., the Administrator may determine that performance conditions applicable to an Award (or portion thereof) were not met as of the time of a Change in Control and therefore that the Award (or such portion) is forfeited for no consideration in connection with the Change in Control, or may deem performance conditions met at a specified level in connection with a Change in Control, in its discretion). For purposes of the immediately preceding sentence, a cash-out under Section 7(a)(2) above or an acceleration under Section 7(a)(3) above will not, in and of itself, be treated as the lapsing (or satisfaction) of a performance or other vesting condition. In the case of Restricted Stock that does not vest and is not forfeited in connection with the Change in Control, the Administrator may require that any amounts delivered, exchanged or otherwise paid in respect of such Stock in connection with the Change in Control be placed in escrow or otherwise made subject to such restrictions as the Administrator deems appropriate to carry out the intent of the Plan.

(6) **Uniform Treatment Not Required.** For the avoidance of doubt, the Administrator need not treat Participants or Awards (or portions thereof) in a uniform manner, and may treat different Participants and/or Awards differently, in connection with a Change in Control.
(b) Changes in and Distributions with Respect to Stock.

1. Basic Adjustment Provisions. In the event of a stock dividend, stock split or combination of shares (including a reverse stock split), merger, spin-off transaction, extraordinary dividend or distribution, recapitalization or other change in the Company’s capital structure that constitutes an equity restructuring, in each case, determined consistent with the Accounting Rules, the Administrator shall make appropriate adjustments (as the Administrator determines in its sole discretion) to the Share Pool, the number and kind of shares of stock or securities underlying Equity Awards then outstanding or subsequently granted, any exercise or purchase prices (or base values) relating to Awards and any other provision of Awards affected by such change. For the avoidance of doubt, the Administrator may determine in its sole discretion in any such case that no adjustment is appropriate in the event that cash or other property is provided (or may be provided subject to vesting or other conditions) in lieu of an adjustment to the Award (or portion thereof).

2. Certain Other Adjustments. The Administrator may also make adjustments of the type described in Section 7(b)(1) above to take into account distributions to stockholders other than those provided for in Sections 7(a) and 7(b)(1) above, or any other event, if the Administrator determines that adjustments are appropriate to avoid distortion in the operation of the Plan or any Award, having due regard for the qualification of ISOs under Section 422, the requirements of Section 409A, to the extent applicable, and the Accounting Rules.

3. Continuing Application of Plan Terms. References in the Plan to shares of Stock will be construed to include any stock, securities, cash-based arrangements or other property resulting from an adjustment pursuant to this Section 7.

8. LEGAL CONDITIONS ON DELIVERY OF STOCK

The Company will not be obligated to issue any shares of Stock pursuant to the Plan or to remove any restriction from shares of Stock previously issued under the Plan until: (i) the Company is satisfied, in its sole discretion, that all legal matters in connection with the issuance of such shares have been addressed and resolved; (ii) if the outstanding Stock is at the time of issuance listed on any stock exchange or national market system, the shares to be issued have been listed or authorized to be listed on such exchange or system upon official notice of issuance; and (iii) all conditions of the Award have been satisfied or waived. The Company may require, as a condition to the exercise of an Award or the issuance of shares of Stock under an Award, such representations or agreements as counsel for the Company may consider appropriate to avoid violation of the U.S. Securities Act of 1933, as amended, or any applicable state or non-U.S. securities law. Any Stock issued under the Plan will be evidenced in such manner as the Administrator determines appropriate, including book-entry registration or delivery of stock certificates. In the event that the Administrator determines that stock certificates will be issued in connection with Stock issued under the Plan, the Administrator may require that such certificates bear an appropriate legend reflecting any restriction on transfer applicable to such Stock, and the Company may hold the certificates pending the lapse of the applicable restrictions.
9. AMENDMENT AND TERMINATION

The Administrator may at any time or times amend the Plan or any outstanding Award for any purpose which may at the time be permitted by applicable law, and may at any time terminate the Plan as to any future grants of Awards; provided, however, that except as otherwise expressly provided in the Plan or the applicable Award, the Administrator may not, without the Participant's consent, alter the terms of an Award so as to affect materially and adversely the Participant's rights under the Award, unless the Administrator expressly reserved the right to do so in the Plan or at the time the applicable Award was granted. Any amendments to the Plan will be conditioned upon stockholder approval only to the extent, if any, such approval is required by applicable law (including the Code) or stock exchange requirements, as determined by the Administrator. For the avoidance of doubt, without limiting the Administrator's rights hereunder, no adjustment to any Award pursuant to the terms of Section 7 or Section 12 will be treated as an amendment requiring a Participant's consent.

10. OTHER COMPENSATION ARRANGEMENTS

The existence of the Plan or the grant of any Award will not affect the right of the Company or any of its Affiliates or subsidiaries to grant any person bonuses or other compensation in addition to Awards under the Plan.

11. MISCELLANEOUS

(a) Waiver of Jury Trial. By accepting or being deemed to have accepted an Award under the Plan, each Participant waives (or will be deemed to have waived), to the maximum extent permitted under applicable law, any right to a trial by jury in any action, proceeding or counterclaim concerning any rights under the Plan or any Award, or under any amendment, waiver, consent, instrument, document or other agreement delivered or which in the future may be delivered in connection therewith, and agrees (or will be deemed to have agreed) that any such action, proceedings or counterclaim will be tried before a court and not before a jury, subject to the last sentence of this Section 11(a). By accepting or being deemed to have accepted an Award under the Plan, each Participant certifies that no officer, representative, or attorney of the Company or any of its Affiliates has represented, expressly or otherwise, that the Company would not, in the event of any action, proceeding or counterclaim, seek to enforce the foregoing waivers. Nonetheless anything to the contrary in the Plan, nothing herein is to be construed as limiting the ability of the Company and a Participant to agree (or superseding any prior agreement) to submit any dispute arising under the terms of the Plan or any Award to binding arbitration or as limiting the ability of the Company to require any individual to agree to submit such disputes to binding arbitration as a condition of receiving an Award hereunder.

(b) Limitation of Liability. Notwithstanding anything to the contrary in the Plan or any Award, none of the Company nor any of its Affiliates, nor any of its subsidiaries, nor the Administrator, nor any person acting on behalf of the Company, its Affiliates, any of its subsidiaries, or the Administrator, will be liable to any Participant, to any permitted transferee, to the estate or beneficiary of any Participant or any permitted transferee, or to any other person by reason of any acceleration of income, any additional tax, or any penalty, interest or other liability asserted by reason of the failure of an Award to satisfy the requirements of Section 422 or Section 409A or by reason of Section 4999 of the Code (or, in each case, any similar state or local tax law) or otherwise asserted with respect to any Award.
(c) **Unfunded Plan.** The Company’s obligations under the Plan are unfunded, and no Participant will have any right to specific assets of the Company in respect of any Equity Award. Participants will be general unsecured creditors of the Company with respect to any amounts due or payable under the Plan.

12. **RULES FOR PARTICIPANTS SUBJECT TO NON-U.S. LAWS**

The Administrator may at any time and from time to time (including before or after an Award is granted) establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan for Participants based outside of the U.S. and/or subject to the laws of countries other than the U.S., including by establishing one or more sub-plans, supplements or appendices under the Plan or any Award Agreement for the purpose of complying or facilitating compliance with non-U.S. laws or taking advantage of tax favorable treatment or for any other legal or administrative reason determined by the Administrator. Any such sub-plan, supplement or appendix may contain, in each case, (i) such limitations on the Administrator’s discretion under the Plan and (ii) such additional or different terms and conditions, as the Administrator deems necessary or desirable and will be deemed to be part of the Plan but will apply only to Participants within the group to which the sub-plan, supplement or appendix applies (as determined by the Administrator); provided that no sub-plan, supplement or appendix, rule or regulation established pursuant to this provision shall increase the Share Pool or cause a violation of any U.S. or non-U.S. law or regulation.

13. **GOVERNING LAW**

(a) **Certain Requirements of Corporate Law.** Equity Awards and shares of Stock will be granted, issued and administered consistent with the requirements of applicable Delaware law relating to the issuance of stock and the consideration to be received therefor, and with the applicable requirements of the stock exchanges or other trading systems on which the Stock is listed or entered for trading, in each case as determined by the Administrator.

(b) **Other Matters.** Except as otherwise provided by the express terms of an Award Agreement, under a sub-plan described in Section 12 or as provided in Section 13(a) above, the domestic substantive laws of the State of Delaware govern the provisions of the Plan and of Awards under the Plan and all claims or disputes arising out of or based upon the Plan or any Award under the Plan or relating to the subject matter hereof or thereof without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

(c) **Jurisdiction.** Unless otherwise provided in an Award Agreement or otherwise agreed in a writing with the Company or any of its Affiliates (including an arbitration agreement or arrangement described in Section 11(a)), by accepting (or being deemed to have accepted) an Award, each Participant agrees or will be deemed to have agreed to (i) submit irrevocably and unconditionally to the jurisdiction of the federal and state courts located within the geographic boundaries of the United States District Court for the District of Delaware for the purpose of any
suit, action or other proceeding arising out of or based upon the Plan or any Award; (ii) not commence any suit, action or other proceeding arising out of or based upon the Plan or any Award, except in the federal and state courts located within the geographic boundaries of the United States District Court for the District of Delaware; and (iii) waive, and not assert, by way of motion as a defense or otherwise, in any such suit, action or proceeding, any claim that he or she is not subject personally to the jurisdiction of the above-named courts that his or her property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that the Plan or any Award or the subject matter thereof may not be enforced in or by such court. Notwithstanding the foregoing, this provision shall not be construed to require a Participant who primarily resides and works in California to adjudicate outside of California a claim arising in California, except to the extent permitted by Section 925(e) of the California Labor Code.
Definition of Terms

The following terms, when used in the Plan, have the meanings and are subject to the provisions set forth below:


“Administrator”: The Compensation Committee, except that the Compensation Committee may delegate (i) to one or more of its members (or one or more other members of the Board, including the full Board) such of its duties, powers and responsibilities as it may determine; (ii) to one or more officers of the Company the power to grant Awards to the extent permitted by applicable law; and (iii) to such Employees or other persons as it determines such ministerial tasks as it deems appropriate. For purposes of the Plan, the term “Administrator” will include the Board, the Compensation Committee, and the person or persons delegated authority under the Plan to the extent of such delegation, as applicable.

“Affiliate”: Any entity that, directly or indirectly, is controlled by, controls or is under common control with the Company and/or any entity in which the Company has a significant equity interest, in either case, as determined by the Board, including, for the avoidance of doubt, FTW, McAfee, LLC and their respective subsidiaries.

“Award”: Any or a combination of the following granted under the Plan:
   (i) Stock Options;
   (ii) SARs;
   (iii) Restricted Stock;
   (iv) Unrestricted Stock;
   (v) Stock Units, including Restricted Stock Units;
   (vi) Performance Awards;
   (vii) Cash Awards; or
   (viii) Awards (other than Awards described in (i) through (vii) above) that are convertible into or otherwise based on Stock.

“Award Agreement”: Any agreement, certificate, notice of grant or other similar written evidence of an Award, which may consist of one or more documents.

“Board”: The Board of Directors of the Company.
“Cash Award”: An Award denominated in cash (excluding, for the avoidance of doubt, Awards that are denominated in equity but that shall or may be settled in cash).

“Cause”: as determined by the Administrator, (i) gross negligence or willful misconduct in connection with the performance of duties with respect to (A) the Participant’s Employment or (B) the Participant’s duties under any employment or similar agreement (including an offer letter) with the Company or any of its Affiliates; (ii) the Participant’s commission of (or pleading guilty or pleading no contest or nolo contendere to) a felony or other crime involving moral turpitude; (iii) the performance by the Participant of any act or acts of fraud, disloyalty or dishonesty in connection with or relating to the business of the Company or any of its Affiliates or the misappropriation (or attempted misappropriation) of any of the funds or property of the Company or any of its Affiliates; (iv) material breach of any restrictive covenant relating to noncompetition or material breach of any other restrictive covenant applicable to the Participant in favor of the Company or any of its Affiliates; or (v) a material violation of the written policies or procedures of the Company or of any of its Affiliates (with it being understood that any violation of a policy regarding sexual harassment, sexual misconduct, or any form of discrimination shall be considered a material violation of a written policy) or the Participant’s causing substantial harm to the business reputation of any of them (without regard to any mitigation of such harm resulting from the termination of the Participant’s Employment). Notwithstanding the foregoing, if the Participant is party to an individual employment, severance-benefit, change-in-control or similar agreement (including an offer letter) with the Company or any of its Affiliates that contains a definition of “Cause” (or a correlative term), such definition will apply in lieu of the definition set forth above during the term of such agreement.

“Change in Control”: Any of the following events or series of related events after the date hereof: (i) any person, or group of persons acting together which would constitute a “group” for purposes of Section 13(d) of the Exchange Act, or any successor provisions thereto, is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then-outstanding voting securities (other than a group formed pursuant to the Stockholders Agreement, dated in or about October 2020 (as amended from time to time, the “Stockholders Agreement”)); (ii) there is consummated a merger, consolidation or similar business transaction involving the Company with any other person or persons, and, either (x) the Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a subsidiary, the ultimate parent thereof, or (y) immediately after the consummation of such transaction, the voting securities of the Company immediately prior to such transaction do not continue to represent or are not converted into more than 50% of the combined voting power of the then-outstanding voting securities of the person resulting from such transaction or, if the surviving company is a subsidiary, the ultimate parent thereof; or (iii) there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Company of all or substantially all of the Company’s assets (including a sale of assets of FTW), other than such sale or other disposition by the Company of all or substantially all of the Company’s assets to an entity at least fifty percent (50%) of the combined voting power of the voting securities of which are owned by shareholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale. Notwithstanding the foregoing, a “Change in Control” shall not be deemed to have occurred (x) by virtue of the consummation of any transaction or series of integrated transactions.
immediately following which the ultimate beneficial owners of the Class A Common Stock and Class B Common Stock of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares or equity of, an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions or (γ) by virtue of the consummation of any transaction or series of transactions, immediately following which, the Company and one or more other entities (the “Other Constituent Companies”) shall have become separate wholly-owned Subsidiaries of a holding company, and the ultimate beneficial owners of the Class A Common Stock and Class B Common Stock immediately prior to such transaction or series of transactions, together with the ultimate beneficial owners of the outstanding equity interests in the Other Constituent Companies immediately prior to such transaction or series of transactions, shall have become the equityholders of the new holding company in exchange for their respective equity interests in the Company and the Other Constituent Companies, and such transaction or transactions would not otherwise constitute a “Change in Control” assuming references to the Company are references to such holding company. In addition, with respect to any payment considered to be nonqualified deferred compensation under Section 409A of the Code, to the extent applicable, that is payable upon a Change in Control or other similar event, to the extent required to avoid the imposition of any additional tax, interest or penalty under Section 409A of the Code, no amount will be payable unless such Change in Control or other event constitutes a “change in control event” within the meaning of Section 1.409A-3(i)(5) of the Treasury Regulations.

“Code”: The U.S. Internal Revenue Code of 1986, as from time to time amended and in effect, or any successor statute as from time to time in effect.

“Compensation Committee”: The Leadership Development & Compensation Committee of the Board.

“Company”: McAfee Corp., a Delaware corporation or any successor thereto.

“Date of Adoption”: The earlier of the date the Plan was approved by the Company’s stockholders or adopted by the Board.

“Director”: A member of the Board who is not an Employee.

“Disability”: In the case of any Participant who is party to an employment, change of control or severance-benefit agreement that contains a definition of “Disability” (or a corollary term), the definition set forth in such agreement applies with respect to such Participant for purposes of the Plan for so long as such agreement is in effect. In every other case, “Disability” means, as determined by the Administrator, absence from work due to a disability for a period in excess of ninety (90) days in any twelve (12)-month period that would entitle the Participant to receive benefits under the Company’s long-term disability program as in effect from time to time (if the Participant were a participant in such program).

“Employee”: Any person who is employed by the Company or any of its Affiliates.
“Employment”: A Participant’s employment or other service relationship with the Company or any of its Affiliates. Employment will be deemed to continue, unless the Administrator otherwise determines, so long as the Participant is employed by, or otherwise is providing services in a capacity described in Section 5 to, the Company or any of its Affiliates or subsidiaries. If a Participant’s employment or other service relationship is with any Affiliate or subsidiary of the Company and that entity ceases to be an Affiliate or subsidiary of the Company, the Participant’s Employment will be deemed to have terminated when the entity ceases to be an Affiliate or subsidiary of the Company unless the Participant transfers Employment to the Company or one of its remaining Affiliates or subsidiaries. Notwithstanding the foregoing, in construing the provisions of any Award relating to the payment of “nonqualified deferred compensation” (subject to Section 409A) upon a termination or cessation of Employment, references to termination or cessation of employment, separation from service, retirement or similar or correlative terms will be construed to require a “separation from service” (as that term is defined in Section 1.409A-1(h) of the Treasury Regulations, after giving effect to the presumptions contained therein) from the Company and from all other corporations and trades or businesses, if any, that would be treated as a single “service recipient” with the Company under Section 1.409A-1(h)(3) of the Treasury Regulations. The Company may, but need not, elect in writing, subject to the applicable limitations under Section 409A, any of the special elective rules prescribed in Section 1.409A-1(h) of the Treasury Regulations for purposes of determining whether a “separation from service” has occurred. Any such written election will be deemed a part of the Plan.

“Equity Award”: An Award other than a Cash Award.


“Fair Market Value”: As of a particular date, (i) the closing price for a share of Stock reported on the Nasdaq Global Select Market (or any other national securities exchange on which the Stock is then listed) for that date or, if no closing price is reported for that date, the closing price of a share of Stock on the immediately preceding date on which a closing price was reported or (ii) in the event that the Stock is not traded on a national securities exchange, the fair market value of a share of Stock determined by the Administrator consistent with the rules of Section 422 and Section 409A, to the extent applicable.

“FTW”: Foundation Technology Worldwide LLC, a Delaware limited liability company.

“ISO”: A Stock Option intended to be an “incentive stock option” within the meaning of Section 422. Each Stock Option granted pursuant to the Plan will be treated as providing by its terms that it is to be an NSO unless, as of the date of grant, it is expressly designated as an ISO in the applicable Award Agreement.

“NSO”: A Stock Option that is not intended to be an “incentive stock option” within the meaning of Section 422.

“Participant”: A person who is granted an Award under the Plan.

“Performance Award”: An Award subject to performance vesting conditions, which may include Performance Criteria.
“Performance Criteria”: Specified criteria, other than the mere continuation of Employment or the mere passage of time, the satisfaction of which is a condition for the grant, exercisability, vesting or full enjoyment of an Award as determined by the Administrator. A Performance Criterion and any targets with respect thereto need not be based upon an increase, a positive or improved result or avoidance of loss and may be applied to a Participant individually, or to a business unit or division of the Company or to the Company as a whole and may relate to any criterion or any combination of criteria determined by the Administrator (measured either absolutely or comparatively (including, without limitation, by reference to an index or indices or the performance of one or more companies), which may be determined either on a consolidated basis or, as the context permits, on a divisional, subsidiary, line of business, project or geographical basis or in combinations thereof and subject to such adjustments, if any, as the Administrator specifies). A Performance Criterion may also be based on individual performance and/or subjective performance criteria. The Administrator may provide that one or more of the Performance Criteria applicable to such Award will be adjusted in a manner to reflect events (for example, but without limitation, acquisitions or dispositions) occurring during the performance period that affect the applicable Performance Criterion or Criteria.

“Plan”: The McAfee 2020 Omnibus Incentive Plan, as from time to time amended and in effect.

“Priority Plan”: The McAfee 2017 Management Incentive Plan, as amended and restated.

“Restricted Stock”: Stock subject to restrictions requiring that it be forfeited, redelivered or offered for sale to the Company if specified performance or other vesting conditions are not satisfied.

“Restricted Stock Unit”: A Stock Unit that is, or as to which the issuance of Stock or delivery of cash in lieu of Stock is, subject to the satisfaction of specified performance or other vesting conditions.

“SAR”: A right entitling the holder upon exercise to receive an amount (payable in cash or in shares of Stock of equivalent value) equal to the excess of the Fair Market Value of the shares of Stock subject to the right over the base value from which appreciation under the SAR is to be measured.

“Section 409A”: Section 409A of the Code and the regulations thereunder.

“Section 422”: Section 422 of the Code and the regulations thereunder.

“Stock”: Class A Common stock of the Company, par value $0.001 per share.

“Stock Option”: An option entitling the holder to acquire shares of Stock upon payment of the exercise price.

“Stock Unit”: An unfunded and unsecured promise, denominated in shares of Stock, to issue Stock or deliver cash measured by the value of Stock in the future.
“Substitute Award”: An award granted under the Plan in substitution for one or more equity awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition.

“Unrestricted Stock”: Stock not subject to any restrictions under the terms of the Award.
This agreement (this "Agreement") evidences a stock option granted by McAfee Corp. (the "Company") to the individual named above (the "Participant"), pursuant to and subject to the terms and conditions of the McAfee 2020 Omnibus Incentive Plan (as from time to time amended and in effect, the "Plan"). Except as otherwise defined herein, all capitalized terms used herein have the same meaning as in the Plan.

1. **Grant of Stock Option.** On the date of grant set forth above (the "Date of Grant"), the Company granted to the Participant an option (the "Stock Option") to purchase, pursuant to and subject to the terms and conditions set forth in this Agreement and in the Plan, up to the number of shares of Stock set forth above (the "Shares"), with an exercise price per Share as set forth above, in each case, subject to adjustment pursuant to Section 7 of the Plan in respect of transactions occurring after the date hereof.

The Stock Option evidenced by this Agreement is a non-statutory option (that is, an option that is not intended to qualify as an ISO) and is granted to the Participant in connection with the Participant’s Employment. For purposes of the immediately preceding sentence, “qualifying subsidiary” means a subsidiary of the Company as to which the Company has a “controlling interest” as described in Treas. Regs. §1.409A-1(b)(5)(iii)(E)(1).

2. **Vesting.** The term "vest" as used herein with respect to the Stock Option or any portion thereof means to become exercisable and the term "vested" with respect to the Stock Option (or any portion thereof) means that the Stock Option (or portion thereof) is then exercisable, subject in each case to the terms of the Plan. Unless earlier terminated, forfeited, relinquished or expired, the Stock Option will vest [ ]. Except as expressly set forth above, no portion of the Stock Option shall vest on any vesting date unless the Participant has remained in continuous Employment from the Date of Grant until such vesting date.

3. **Exercise of the Stock Option.** No portion of the Stock Option may be exercised unless such portion is vested. Each election to exercise any vested portion of the Stock Option will be subject to the terms and conditions of the Plan and must be in written or electronic form acceptable to the Administrator, signed (including by electronic signature) by the Participant or, if at the relevant time the Stock Option has passed to a permitted transferee, the permitted transferee. Each such written or electronic exercise election must be received by the Company at its principal office or by such other party as the Administrator may prescribe and be accompanied by payment in full of the exercise price by cash or check, through a broker-assisted exercise program acceptable to
the Administrator, or as otherwise provided in the Plan. Except to the extent provided in Section 6(b)(4) of the Plan, the latest date on which the Stock Option or any portion thereof may be exercised is the tenth (10th) anniversary of the Date of Grant (the “Final Exercise Date”) and, if not exercised by such date, the Stock Option or any remaining portion thereof will thereupon immediately terminate. No Shares will be issued pursuant to this Agreement unless and until all legal requirements applicable to the issuance or transfer of such Shares have been complied with to the satisfaction of the Administrator.

4. **Cessation of Employment.** If the Participant’s Employment ceases for any reason, except as expressly provided for in an employment, severance-benefit or other agreement between the Participant and the Company that is in effect at the time of such termination of Employment, the Stock Option, to the extent not then vested, will be immediately forfeited for no consideration, and any vested portion of the Stock Option that is then outstanding will remain exercisable for the period described in Section 6(a)(4) of the Plan (unless terminated as provided in Section 6(a)(4)(D)), subject to the other terms of the Plan and this Agreement.

5. **Restrictive Covenants.** Participant acknowledges and agrees that Participant will execute, no later than the date hereof, and shall be bound by, the Restrictive Covenant Agreement attached hereto as Schedule A. The provisions of Schedule A shall survive any termination, expiration, forfeiture, transfer or other disposition of the Stock Option or any Shares acquired pursuant to the exercise of the Stock Option. In addition to any remedies that may be available to the Company or any of its Affiliates, the Administrator may cause the Stock Option (whether or not vested or exercisable) to be forfeited and the proceeds from the exercise of the Stock Option and/or the disposition, and/or distributions or other amounts received in respect of the Shares to be disgorged to the Company, with interest and related earnings, if at any time the Participant is not in compliance with all of the provisions of Schedule A. By accepting the Stock Option, the Participant expressly acknowledges and agrees that his or her rights, and those of any other holder of the Stock Option (or any portion thereof), under the Stock Option, including the right to any Shares acquired under the Stock Option and any amounts received in respect thereof, are subject to Section 6(a)(5) of the Plan.

6. **Company Policies.** By accepting the Stock Option, the Participant expressly acknowledges and agrees that the Participant’s rights, and those of any permitted transferee, with respect to the Stock Option, including the right to any Shares acquired under the Stock Option or proceeds from the disposition thereof, are subject to Section 6(a)(5) of the Plan (including any successor provision). The Participant further agrees to be bound by the terms of any clawback, recoupment or similar policy of the Company or any of its Affiliates and any policy of the Company or any of its Affiliates that relates to trading on non-public information and permitted transactions with respect to shares of Stock, including limitations on hedging and pledging, in each case, as in effect from time to time. Nothing in the preceding sentence will be construed as limiting the general application of Section 10 of this Agreement.

7. **Nontransferability.** The Stock Option may not be transferred except as expressly permitted under Section 6(a)(3) of the Plan. Shares issued in respect of the Stock Option may be transferred subject to compliance with applicable law and the terms of any policies of the Company or any of its Affiliates.
8. **Withholding.** The Participant expressly acknowledges and agrees that the Participant’s rights hereunder, including the right to be issued Shares upon exercise of the Stock Option, are subject to the Participant promptly paying to the Company in cash or by check (or by such other means as may be acceptable to the Administrator) all taxes required to be withheld with respect to the Stock Option. No Shares will be issued pursuant to the exercise of the Stock Option unless and until the person exercising the Stock Option has remitted to the Company an amount in cash sufficient to satisfy any federal, state, or local withholding tax requirements, or has made other arrangements satisfactory to the Company with respect to such taxes. The Participant authorizes the Company and its subsidiaries to withhold such amount from any amounts otherwise owed to the Participant, but nothing in this sentence will be construed as relieving the Participant of any liability for satisfying his or her obligation under the preceding provisions of this Section 8.

9. **Effect on Employment.** Neither the grant of the Stock Option, nor the issuance of Shares upon exercise of the Stock Option, will give the Participant any right to be retained in the employ or service of the Company or any of its subsidiaries, affect the right of the Company or any of its subsidiaries to discharge the Participant at any time, or affect any right of the Participant to terminate his or her Employment at any time.

10. **Data Privacy.** The Company and the Participant’s employer hereby notify the Participant of the following in relation to the Participant’s personal data and the collection, processing and transfer of such data in relation to the Stock Option and Participant’s participation in the Plan:

(a) the collection, processing and transfer of the Participant’s personal data is necessary for the Company’s administration of the Plan and the Participant’s participation in the Plan, and the Participant’s denial and/or objection to the collection, processing and transfer of personal data may affect the Participant’s ability to participate in the Plan. As such, the Participant voluntarily acknowledges, consents and agrees (where required under applicable law) to the collection, use, processing and transfer of personal data as described herein.

(b) The Company and the Participant’s employer hold certain personal information about the Participant, including (but not limited to) the Participant’s name, home address and telephone number, date of birth, social security number or other employee identification number, salary, nationality, job title, any interests or directorships held in the Company, details of all awards or any other entitlements awarded, canceled, purchased, vested, exercised, unvested or outstanding in Participant’s favor for the purpose of managing and administering the Plan (collectively, the “Data”). The Data may be provided by the Participant or collected, where lawful, from third parties, and the Company and the Participant’s employer will process the Data for the exclusive purpose of implementing, administering and managing the Participant’s participation in the Plan. Processing of the Data will take place through electronic and non-electronic means according to logics and procedures strictly correlated to the purposes for which the Data is collected and with confidentiality and security provisions as set forth by applicable laws and regulations in the Participant’s country of residence. Data processing operations will be performed in a manner that minimizes the use of personal and identification data when such operations are unnecessary for the processing purposes sought. The Data will be accessible within the Company’s organization only by those persons requiring access for purposes of the implementation, administration and operation of the Plan and for the Participant’s participation in the Plan.
(c) The Company and the Participant’s employer will transfer Data as necessary for the purpose of implementation, administration and management of the Participant’s participation in the Plan, and the Company and/or the Participant’s employer may each further transfer Data to any third parties assisting the Company in the implementation, administration and management of the Plan. These recipients may be located in the European Economic Area, the United States or elsewhere throughout the world. The Participant hereby authorizes (where required under applicable law) the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for purposes of implementing, administering and managing the Participant’s participation in the Plan, including any requisite transfer of such Data as may be required for the administration of the Plan. The Participant may, at any time, exercise the Participant’s rights provided under applicable personal data protection laws (if any), which may include the right to (i) obtain confirmation as to the existence of the Data, (ii) verify the content, origin and accuracy of the Data, (iii) request the integration, update, amendment, deletion, or blockage (for breach of applicable laws) of the Data, and (iv) oppose, for legal reasons, the collection, processing or transfer of the Data that is not necessary or required for the implementation, administration and/or operation of the Plan and the Participant’s participation in the Plan. The Participant may seek to exercise these rights by contacting the Participant’s local human resources manager.

11. Provisions of the Plan. This Agreement is subject in its entirety to the provisions of the Plan (including any applicable sub-Plan adopted pursuant to Section 12 of the Plan), which are incorporated herein by reference. A copy of the Plan (and any such sub-plan) as in effect on the Date of Grant has been made available to the Participant. By accepting the Stock Option, the Participant agrees that he or she has reviewed the Plan (including any such sub-plan) and this Agreement and agrees to be bound by the terms of the Plan and this Agreement. In the event of any conflict between the terms of this Agreement and the Plan, the terms of the Plan will control.

12. Governing Law; Disputes. The validity, construction and effect of this Agreement, and of any determinations or decisions made by the Administrator relating to this Agreement, and the rights of any and all Persons having, or claiming to have, any interest under this Agreement, shall be governed by and construed in accordance with the laws of the jurisdiction specified in Section 13 of the Plan (unless otherwise provided in an applicable sub-plan adopted pursuant to Section 12 of the Plan). Any action with respect to this Agreement will be brought in as determined under Section 13 of the Plan (unless otherwise provided in an applicable sub-plan adopted pursuant to Section 12 of the Plan).

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13. **Acknowledgements**. The Participant acknowledges and agrees that:

(a) The grant of the Stock Option is considered a one-time benefit and does not create a contractual or other right to receive any other award under the Plan, benefits in lieu of such awards or any other benefits in the future.

(b) The Plan is a voluntary program of the Company and future awards, if any, will be at the sole discretion of the Company, including, but not limited to, the timing of any award, the amount of any award, vesting provisions and purchase price, if any.

(c) The value of the Stock Option is an extraordinary item of compensation outside of the scope of the Participant’s employment. As such, the Stock Option is not part of normal or expected compensation for purposes of calculating any severance, resignation, redundancy, end of service payments, bonuses, long-term service awards, pension or retirement benefits or similar payments. The future value of the shares of Stock covered by the Stock Option is unknown and cannot be predicted with certainty.

(d) (i) This Agreement may be executed in two or more counterparts, each of which will be an original and all of which together will constitute one and the same instrument; (ii) this Agreement may be executed and exchanged using facsimile, portable document format (PDF) or electronic signature (including by DocuSign or by similar means), which, in each case, will constitute an original signature for all purposes hereunder; and (iii) such signature by the Company will be binding against the Company and will create a legally binding agreement when this Agreement is countersigned by the Participant.

(e) The Participant will not be treated as the owner of any stock in the Company by reason of the grant of the Stock Option until it is exercised and the applicable Shares are delivered hereunder and, as a result, will have no rights (including, rights to dividends, distributions or rights to equivalent amounts or voting rights) as a stockholder in respect of the Shares prior to the delivery of such Shares.

(f) The rights, duties, and obligations under this Agreement and the Plan may not be assigned by the Participant or the Company, except that this Agreement shall be assignable by the Company to any successor entity, including an entity acquiring all, or substantially all, of the assets of the Company or an Affiliate of the Company. The provisions of this Agreement shall be binding on any such assignee.

(g) This Agreement and the Plan (including the documents referenced in each), constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties related to the subject matter hereof. There are no agreements, understandings, specific restrictions, warranties, or representations relating to said subject matter between the parties other than those set forth herein or herein provided for. This Agreement may be amended only in accordance with Section 9 of the Plan.
(h) The failure of a party to insist upon strict performance of any provision of this Agreement in any one or more instances shall not be construed as a waiver or relinquishment of the right to insist upon strict compliance with such provision in the future. In the event of any ambiguity in this Agreement or any matters as to which this Agreement is silent, the Plan will govern.

(i) In the event that any one or more of the provisions of this Agreement or any word, phrase, clause, sentence, or other portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable laws.

(j) As used in this Agreement, the singular form shall include, if appropriate, the plural. The headings used in this Agreement are solely for the convenience and reference of the parties and are not intended to be descriptive of the entire contents of any paragraph and shall not limit or otherwise affect any of the terms, provisions, or construction thereof.

14. **Deadline for Acceptance.** In the event that the Participant does not accept the terms of the Stock Option by executing this Agreement within forty-five (45) days after receiving it, the Company may at any time thereafter, upon notice to the Participant, immediately cancel the Stock Option without payment due thereon, in which case the Participant shall have no further rights with respect to the Stock Option.

[Signature page follows]

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The Company, by its duly authorized officer, and the Participant have executed this Agreement as of the Date of Grant.

COMPANY

By:
Name: ____________________________
Title: ____________________________

Agreed and Accepted:

THE PARTICIPANT

By

[Participant’s Name]

[Signature Page to Stock Option Award Agreement]
RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement (this “Agreement”) is made and entered into as of [*] by and between McAfee Corp. (the “Company”) on its own behalf and on behalf of its Affiliates (defined below), as may exist from time to time, and [*] (“Participant”). Capitalized terms used in this Agreement but not otherwise defined herein shall have their respective meanings set forth in Participant’s Award Agreement and the Plan.

1. Mutual Agreement. Participant acknowledges the importance to the Company and its Affiliates of protecting their Confidential Information and other legitimate business interests, including the valuable trade secrets and good will that they have developed or acquired. In consideration of Participant’s Employment, Participant’s Award and other good and valuable consideration, the receipt and sufficiency of which Participant hereby acknowledges, Participant agrees that the following restrictions on Participant’s activities during and after Employment are reasonable and necessary to protect the legitimate interests of the Company.

2. Confidentiality.

2.1. Participant agrees that all Confidential Information which Participant creates or to which Participant has access as a result of Participant’s Employment and other associations with the Company or any of its Affiliates is and will remain the sole and exclusive property of the Company and its Affiliates. Participant agrees that, except as required for the proper performance of Participant’s regular duties for the Company, as expressly authorized in writing in advance by a duly authorized officer of the Company, or as required by applicable law, Participant will never, directly or indirectly, use or disclose any Confidential Information. Participant understands and agrees that this restriction will continue to apply after the termination of Participant’s Employment for any reason. For the avoidance of doubt, nothing in this Agreement limits, restricts or in any other way affects Participant’s communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity. Without limiting the foregoing, Participant may disclose Confidential Information to the extent required by law or order of a court or governmental entity; provided however, that Participant must give the Company prompt notice in order that the Company may seek a protective order (or seek to narrow the scope of the required disclosure) and Participant shall reasonably cooperate (at the Company’s cost) with the Company in seeking such protective order or reduction in scope. Participant will not be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (b) in a complaint or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Participant may be held liable if Participant unlawfully access trade secrets by unauthorized means.

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2.2. Participant agrees that all documents, records and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company or any of its Affiliates, and any copies, in whole or in part, thereof (the “Documents”), whether or not prepared by Participant, will be the sole and exclusive property of the Company. Participant agrees to safeguard all Documents and to surrender to the Company, at the time Participant’s Employment terminates or at such earlier time or times as an authorized officer of the Company may specify, all Documents then in Participant’s possession or control. Participant also agrees to disclose to the Company, at the time Participant’s Employment terminates or at such earlier time or times as an authorized officer of the Company may specify, all passwords necessary or desirable to obtain access to, or that would assist in obtaining access to, any information which Participant has password-protected on any computer equipment, network or system of the Company or any of its Affiliates.

3. Assignment of Intellectual Property Rights. Participant agrees to promptly and fully disclose all Intellectual Property to the Company. Participant hereby assigns and agrees to assign to the Company (or as otherwise directed by the Company) Participant’s full right, title and interest in and to all Intellectual Property. Participant agrees to execute any and all applications for domestic and foreign patents, copyrights or other proprietary rights and to do such other acts (including the execution and delivery of instruments of further assurance or confirmation) requested by the Company to assign the Intellectual Property to the Company (or as otherwise directed by the Company) and to permit the Company to enforce any patents, copyrights or other proprietary rights to the Intellectual Property. Participant will not charge the Company for time spent in complying with these obligations. All copyrightable works that Participant creates during Employment with the Company will be considered “work made for hire” and will, upon creation, be owned exclusively by the Company.

4. Restricted Activities.

4.1. While Participant is employed by the Company and during the [•]-month period immediately following the date of termination of Participant’s Employment (the “Restricted Period”), Participant agrees to not, directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, co-venturer or otherwise, engage in the Business in any geographic area in which the Company or any of its Affiliates engage in the Business or are actively planning to engage in the Business during Participant’s Employment or, with respect to the portion of the Restricted Period that follows termination of Participant’s Employment, at the time of such termination (the “Restricted Area”), or undertake any planning to do any of the foregoing anywhere in the Restricted Area. Specifically, but without limiting the foregoing, during the Restricted Period, Participant agrees not to work or provide services, in any capacity, anywhere in the Restricted Area, whether as an employee, independent contractor or otherwise, whether with or without compensation, to any Person that is engaged in the Business; provided that notwithstanding the foregoing,
that for purposes of this Agreement, Participant may engage in (i) owning, directly or indirectly, solely as an investment, up to five percent (5%) of any class of securities of any company (whether public or private) that is competitive or substantially similar to the Business; (ii) owning a passive equity interest in a private debt or equity investment fund in which Participant does not have the ability to control or exercise any managerial influence over such fund; or (iii) any activity consented to in advance in writing by the Company.

4.2. During the Restricted Period, Participant agrees to not, directly or indirectly, (a) solicit or encourage any customer, vendor, supplier or other business partner of the Company or any of its Affiliates to terminate or diminish its relationship with any of them; or (b) seek to persuade any customer, such vendor, supplier or other business partner, or any prospective customer, vendor, supplier or other business partner of the Company or any of its Affiliates, to conduct with anyone else any business or activity which such customer, vendor, supplier or other business partner conducts, or such prospective customer, vendor, supplier or other business partner could conduct, with the Company or any of its Affiliates; provided that these restrictions will apply (y) only with respect to those Persons who are or have been a business partner of the Company or any of its Affiliates at any time within the six (6)-month period immediately preceding the activity restricted by this Section 4.2 or whose business has been solicited on behalf of the Company or any of the Affiliates by any of their officers, employees or agents within such six (6)-month period, other than by form letter, blanket mailing or published advertisement, and (z) only if Participant has performed work for such Person during Participant’s Employment or been introduced to, or otherwise had contact with, such Person as a result of Participant’s Employment or other associations with the Company or any of its Affiliates or has had access to Confidential Information which would assist in Participant’s solicitation of such Person.

4.3. During the Restricted Period, Participant agrees to not, and to not assist any other Person to, directly or indirectly, (a) hire or engage, or solicit for hiring or engagement, any employee of the Company or any of its Affiliates or seek to persuade any such employee to discontinue employment or (b) solicit or encourage any independent contractor providing services to the Company or any of its Affiliates to terminate or diminish its relationship with any of them. For purposes of this Agreement, (i) an “employee” or an “independent contractor” of the Company or any of its Affiliates is any Person who was such at any time within the twelve (12)-month period immediately preceding the activity restricted by this Section 4.3 and (ii) an “independent contractor” means only a natural person independent contractor or an entity independent contractor controlled by a natural person providing services to the Company or any of its Affiliates. Notwithstanding the foregoing, for purposes of this Agreement, the placement of general advertisements that may be targeted to a particular geographic or technical area but that are not specifically targeted toward employees or independent contractors of the Company shall not be considered solicitation.

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5. **Nondisparagement.** Subject to the third to last sentence of Section 2.1 of this Agreement, Participant agrees that he or she will not disparage or criticize the Company, its Affiliates, their business, their management or their products or services, and that Participant will not otherwise do or say anything that could materially disrupt the good morale of employees of the Company or any of its Affiliates or could materially harm the interests or reputation of the Company or any of its Affiliates.

6. **Enforcement of Covenants.** In signing this Agreement, Participant gives the Company assurance that Participant has carefully read and considered all of the restraints hereunder, has not relied on any agreements or representations, express or implied, that are not set forth expressly in this Agreement, and has signed this Agreement knowingly and voluntarily. Participant agrees that these restraints are necessary for the reasonable and proper protection of the Company and its Affiliates, and are reasonable in respect to subject matter, length of time and geographic area. Participant further agrees that, were Participant to breach any of the covenants contained herein, the damage to the Company and its Affiliates would be irreparable. So that the Company may enjoy the full benefit of the covenants contained in Section 4 above, Participant agrees that the Restricted Period will be tolled, and will not run, during the period of any breach by Participant of such covenants. In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, that provision will be deemed to be modified to permit its enforcement to the maximum extent permitted by law. Participant agrees that each of the Company’s Affiliates will have the right to enforce Participant’s obligations to that Affiliate under this Agreement. No claimed breach of this Agreement or other violation of law attributed to the Company or any of its Affiliates, or change in the nature or scope of Participant’s Employment or other relationship with the Company or any of its Affiliates, will operate to excuse Participant from the performance of Participant’s obligations under this Agreement.

7. **Definitions.** For purposes of this Agreement, the following definitions apply:

   “Affiliates” has the meaning set forth in the Plan, provided that for purposes of Section 4 above, the term “Affiliate” shall exclude the TPG Member, Intel, the Intel Member (each as defined in the Amended and Restated Limited Liability Company Agreement of FTW) and all Affiliates of such entities other than the Company, its subsidiaries and any brother/sister entities acting in concert with the business or planning of the Company and its subsidiaries.

   “Business” means (i) the business of security solutions related to computers, mobile devices, and networks, providing internet security products and services and/or (ii) any other business that the Company or any of its Affiliates is engaged in or is actively planning to be engaged in, during Participant’s Employment or, with respect to the portion of the Restricted Period that follows termination of Participant’s Employment, at the time of such termination.
“Confidential Information” means any and all information of the Company or any Affiliate of the Company which is not generally known by the public, including without limitation information about the customers, business connections, customer lists, procedures, operations, trade secrets, techniques and other aspects of and information about the business of the Company or any Affiliate of the Company, unless and to the extent that any such information (i) becomes generally known to and available for use by the public other than as a result of Participant’s acts or omissions, or (ii) was properly known to Participant, without restriction, prior to disclosure by the Company.

“Intellectual Property” means inventions, discoveries, developments, improvements, methods, processes, procedures, plans, projects, systems, techniques, strategies, information, compositions, works, concepts and ideas, or modifications or derivatives of any of the foregoing (whether or not patentable or copyrightable or constituting trade secrets) (collectively, “Inventions”) conceived, made, created, developed or reduced to practice by Participant (whether alone or with others, whether or not during normal business hours or on or off Company premises) during Participant’s Employment that relate either to the business of the Company or any of its Affiliates or to any prospective activity of the Company or any of its Affiliates or that result from any work performed by Participant for the Company or any of its Affiliates or that make use of Confidential Information or any of the equipment or facilities of the Company or any of its Affiliates.

8. Compliance with Other Agreements and Obligations. Participant represents and warrants that Participant’s Employment with the Company or any of its Affiliates and the execution and performance of this Agreement will not breach or be in conflict with any other agreement to which Participant is a party or is bound, and that Participant is not now subject to any covenants against competition or similar covenants or other obligations to third parties or to any court order, judgment or decree that would affect the performance of Participant’s obligations hereunder or Participant’s duties and responsibilities to the Company or any of its Affiliates. Participant will not disclose to or use on behalf of the Company or an Affiliate, or induce the Company or any of its Affiliates to possess or use, any confidential or proprietary information of any previous employer or other third party without that party’s consent.

9. Entire Agreement; Severability; Modification. This Agreement sets forth the entire agreement between Participant and the Company, and supersedes all prior and contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof; provided, however, that this Agreement shall not supersede any effective assignment of any invention or other intellectual property to the Company or any of its Affiliates and shall not constitute a waiver by the Company or any of its Affiliates of any right that any of them now has or may now have under any agreement imposing obligations on Participant with respect to confidentiality, non-competition, non-solicitation of employees, independent contractors or like obligations. The provisions of this Agreement are severable. This Agreement may not be modified or amended, and no breach will be deemed to be waived, unless agreed to in writing by Participant and an expressly authorized officer of the Company. Provisions of this Agreement will survive any termination if so provided in this Agreement or if necessary or desirable to accomplish the purpose of other surviving provisions, including, without limitation, Sections 2-6.

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10. **Assignment.** The Company may assign its rights and obligations under this Agreement without Participant’s consent to any of its Affiliates or to any Person with whom the Company will hereafter effect a reorganization, consolidate or merge, or to whom the Company will hereafter transfer all or substantially all of its properties or assets. This Agreement will inure to the benefit of and be binding upon Participant and the Company, and each of their respective successors, executors, administrators, heirs and permitted assigns.

11. **At-Will Employment.** Participant acknowledges that this Agreement is not meant to constitute a contract of employment for a specific duration or term, and that Participant’s employment with the Company is at-will. The Company and Participant will each retain the right to terminate Participant’s employment at any time, with or without notice or cause.

12. **Choice of Law.** This is a Delaware contract and will be governed by and construed in accordance with the laws of the State of Delaware, without regard to any conflict of laws principles that could result in the application of the laws of another jurisdiction. Participant agrees to submit to the exclusive jurisdiction of the courts of and in the State of Delaware in connection with any dispute arising out of this Agreement.
Intending to be legally bound hereby, the parties have signed this Agreement as of the day and year written above.

Company: MCAFEE CORP.

By:

Name: [__________________]
Title: [__________________]

[Company Signature Page to Restrictive Covenant Agreement]
Participant:

Name: [Participant Name]

[Company Signature Page to Restrictive Covenant Agreement]
This agreement (this "Agreement") evidences an award (the "Award") of restricted stock units granted by McAfee Corp. (the "Company") to the individual named above (the "Participant"), pursuant to and subject to the terms of the McAfee 2020 Omnibus Incentive Plan (as from time to time amended and in effect, the "Plan"). Except as otherwise defined herein, all capitalized terms used herein have the same meaning as in the Plan.

1. Grant of Restricted Stock Unit Award. The Company grants to the Participant on the date of grant set forth above (the "Date of Grant") the number of restricted stock units (the "Restricted Stock Units") set forth above, giving the Participant the conditional right to receive, without payment and pursuant to and subject to the terms and conditions set forth in this Agreement and in the Plan, one share of Stock (a "Share") with respect to each Restricted Stock Unit forming part of the Award, subject to adjustment pursuant to Section 7 of the Plan in respect of transactions occurring after the date hereof.

2. Vesting. Unless earlier terminated, forfeited, relinquished or expired, the Restricted Stock Units will vest [                     ]. Except as expressly set forth above, the Restricted Stock Units shall not vest on any vesting date unless Participant has remained in continuous Employment from the Date of Grant until such vesting date.

3. Cessation of Employment. If the Participant’s Employment ceases for any reason, except as expressly provided for in an employment, severance-benefit or other agreement between the Participant and the Company that is in effect at the time of such termination of Employment, the Restricted Stock Units, to the extent not then vested, will be immediately forfeited for no consideration.

4. Issuance of Shares. The Company shall, as soon as practicable upon the vesting of any portion of the Award (but in no event later than thirty (30) days following the date on which such Restricted Stock Units vest), effect delivery of the Shares with respect to such vested Restricted Stock Units to the Participant (or, in the event of the Participant’s death, to the person to whom the Award has passed by will or the laws of descent and distribution). No Shares will be issued pursuant to the Award unless and until all legal requirements applicable to the issuance or transfer of such Shares have been complied with to the satisfaction of the Administrator.
5. **Restrictive Covenants.** If the Participant is otherwise subject to non-competition, non-solicitation, no hire, confidentiality, non-disparagement or other restrictive covenants in favor of the Company or any of its Affiliates, in addition to any remedies that may be available to the Company or any of its Affiliates in respect of the applicable agreement, policy other applicable arrangement, the Administrator may cause the Award to be forfeited and all proceeds and amounts received in respect of the Shares received thereunder and/or the disposition, and/or distributions or other amounts received in respect of, the Shares to be disgorged to the Company, with interest and related earnings, if at any time the Participant is not in compliance with all of the provisions of such applicable restrictive covenant agreement, policy or arrangement.

6. **Company Policies.** By accepting the Award, the Participant expressly acknowledges and agrees that the Participant’s rights, and those of any permitted transferee, with respect to the Restricted Stock Units, including the right to any Shares issued in respect of the Restricted Stock Units or proceeds from the disposition thereof, are subject to Section 6(a)(5) of the Plan (including any successor provision). The Participant further agrees to be bound by the terms of any clawback, recoupment or similar policy of the Company or any of its Affiliates and any policy of the Company or any of its Affiliates that relates to trading on non-public information and permitted transactions with respect to shares of Stock, including limitations on hedging and pledging, in each case, as in effect from time to time. Nothing in the preceding sentence will be construed as limiting the general application of Section 10 of this Agreement.

7. **Nontransferability.** The Award may not be transferred, except as expressly permitted under Section 6(a)(3) of the Plan. Shares issued in respect of vested Restricted Stock Units may be transferred subject to compliance with applicable law and the terms of any policies of the Company or any of its Affiliates.

8. **Taxes.**
   
   (a) No Shares will be delivered pursuant to the Award unless and until the Participant has remitted to the Company in cash or by check (or by such other means as may be acceptable to the Administrator) an amount sufficient to satisfy all taxes required to be withheld in connection with such vesting or settlement.

   (b) The Participant authorizes the Company and its subsidiaries to withhold any amounts due in respect of any required tax withholdings or payments from any amounts otherwise owed to the Participant, but nothing in this sentence may be construed as relieving the Participant of any liability for satisfying his or her obligation under the preceding provisions of this Section 7.

   (c) The Award is intended to be exempt from Section 409A of the Code as a short-term deferral thereunder and shall be construed and administered in accordance with that intent. Notwithstanding the foregoing, in no event will the Company have any liability relating to the failure or alleged failure of any payment or benefit under this Agreement to comply with, or be exempt from, the requirements of Section 409A.

9. **Effect on Employment.** Neither the grant of the Award, nor the issuance of Shares upon the vesting of the Award, will give the Participant any right to be retained in the employ or service of the Company or any of its subsidiaries, affect the right of the Company or any of its subsidiaries to discharge the Participant at any time, or affect any right of the Participant to terminate his or her Employment at any time.
10. **Data Privacy.** The Company and the Participant’s employer hereby notify the Participant of the following in relation to the Participant’s personal data and the collection, processing and transfer of such data in relation to the Award and Participant’s participation in the Plan:

(a) the collection, processing and transfer of the Participant’s personal data is necessary for the Company’s administration of the Plan and the Participant’s participation in the Plan, and the Participant’s denial and/or objection to the collection, processing and transfer of personal data may affect the Participant’s ability to participate in the Plan. As such, the Participant voluntarily acknowledges, consents and agrees (where required under applicable law) to the collection, use, processing and transfer of personal data as described herein.

(b) The Company and the Participant’s employer hold certain personal information about the Participant, including (but not limited to) the Participant’s name, home address and telephone number, date of birth, social security number or other employee identification number, salary, nationality, job title, any interests or directorships held in the Company, details of all awards or any other entitlements awarded, canceled, purchased, vested, exercised, unvested or outstanding in Participant’s favor for the purpose of managing and administering the Plan (collectively, the “Data”). The Data may be provided by the Participant or collected, where lawful, from third parties, and the Company and the Participant’s employer will process the Data for the exclusive purpose of implementing, administering and managing the Participant’s participation in the Plan. Processing of the Data will take place through electronic and non-electronic means according to logics and procedures strictly correlated to the purposes for which the Data is collected and with confidentiality and security provisions as set forth by applicable laws and regulations in the Participant’s country of residence. Data processing operations will be performed in a manner that minimizes the use of personal and identification data when such operations are unnecessary for the processing purposes sought. The Data will be accessible within the Company’s organization only by those persons requiring access for purposes of the implementation, administration and operation of the Plan and for the Participant’s participation in the Plan.

(c) The Company and the Participant’s employer will transfer Data as necessary for the purpose of implementation, administration and management of the Participant’s participation in the Plan, and the Company and/or the Participant’s employer may each further transfer Data to any third parties assisting the Company in the implementation, administration and management of the Plan. These recipients may be located in the European Economic Area, the United States or elsewhere throughout the world. The Participant hereby authorizes (where required under applicable law) the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for purposes of implementing, administering and managing the Participant’s participation in the Plan, including any requisite transfer of such Data as may be required for the administration of the Plan. The Participant may, at any time, exercise the Participant’s rights provided under applicable personal data protection laws (if any), which may include the right to (i) obtain confirmation as to the existence of the Data, (ii) verify the content, origin and accuracy of the Data, (iii) request the integration, update, amendment, deletion, or blockage (for breach of applicable laws) of the Data, and (iv) oppose, for legal reasons, the collection, processing or transfer of the Data that is not necessary or required for the implementation, administration and/or operation of the Plan and the Participant’s participation in the Plan. The Participant may seek to exercise these rights by contacting the Participant’s local human resources manager.
11. **Provisions of the Plan.** This Agreement is subject in its entirety to the provisions of the Plan (including any applicable sub-Plan adopted pursuant to Section 12 of the Plan), which are incorporated herein by reference. A copy of the Plan (and any such sub-plan) as in effect on the Date of Grant has been made available to the Participant. By accepting the Award, the Participant agrees that he or she has reviewed the Plan (including any such sub-plan) and this Agreement and agrees to be bound by the terms of the Plan and this Agreement. In the event of any conflict between the terms of this Agreement and the Plan, the terms of the Plan will control.

12. **Governing Law; Disputes.** The validity, construction and effect of this Agreement, and of any determinations or decisions made by the Administrator relating to this Agreement, and the rights of any and all Persons having, or claiming to have, any interest under this Agreement, shall be governed by and construed in accordance with the laws of the jurisdiction specified in Section 13 of the Plan (unless otherwise provided in an applicable sub-plan adopted pursuant to Section 12 of the Plan). Any action with respect to this Agreement will be brought in as determined under Section 13 of the Plan (unless otherwise provided in an applicable sub-plan adopted pursuant to Section 12 of the Plan).

13. **Acknowledgements.** The Participant acknowledges and agrees that:

   (a) The grant of the Restricted Stock Units is considered a one-time benefit and does not create a contractual or other right to receive any other award under the Plan, benefits in lieu of such awards or any other benefits in the future.

   (b) The Plan is a voluntary program of the Company and future awards, if any, will be at the sole discretion of the Company, including, but not limited to, the timing of any award, the amount of any award, vesting provisions and purchase price, if any.

   (c) The Participant will not be treated as the owner of any Shares by reason of the grant of the Award until the applicable Shares are delivered hereunder and, as a result, will have no rights (including, rights to dividends, distributions or rights to equivalent amounts or voting rights) as a stockholder in respect of the Shares prior to the delivery of such Shares.

   (d) The value of the Restricted Stock Units is an extraordinary item of compensation outside of the scope of the Participant’s employment. As such, the Restricted Stock Units are not part of normal or expected compensation for purposes of calculating any severance, resignation, redundancy, end of service payments, bonuses, long-term service awards, pension or retirement benefits or similar payments. The future value of the Shares covered by the Award is unknown and cannot be predicted with certainty.

   (e) (i) This Agreement may be executed in two or more counterparts, each of which will be an original and all of which together will constitute one and the same instrument; (ii) this Agreement may be executed and exchanged using facsimile, portable document format (PDF) or electronic signature (including by DocuSign or by similar means), which, in each case, will constitute an original signature for all purposes hereunder; and (iii) such signature by the Company will be binding against the Company and will create a legally binding agreement when this Agreement is countersigned by the Participant.
(f) The rights, duties, and obligations under this Agreement and the Plan may not be assigned by the Participant or the Company, except that this Agreement shall be assignable by the Company to any successor entity, including an entity acquiring all, or substantially all, of the assets of the Company or any Affiliate of the Company. The provisions of this Agreement shall be binding on any such assignee.

(g) This Agreement and the Plan (including the documents referenced in each), constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties related to the subject matter hereof. There are no agreements, understandings, specific restrictions, warranties, or representations relating to said subject matter between the parties other than those set forth herein or herein provided for. This Agreement may be amended only in accordance with Section 9 of the Plan.

(h) The failure of a party to insist upon strict performance of any provision of this Agreement in any one or more instances shall not be construed as a waiver or relinquishment of the right to insist upon strict compliance with such provision in the future. In the event of any ambiguity in this Agreement or any matters as to which this Agreement is silent, the Plan will govern.

(i) In the event that any one or more of the provisions of this Agreement or any word, phrase, clause, sentence, or other portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable laws.

(j) As used in this Agreement, the singular form shall include, if appropriate, the plural. The headings used in this Agreement are solely for the convenience and reference of the parties and are not intended to be descriptive of the entire contents of any paragraph and shall not limit or otherwise affect any of the terms, provisions, or construction thereof.

14. Deadline for Acceptance. In the event that the Participant does not accept the terms of the Award by executing this Agreement within forty-five (45) days after receiving it, the Company may at any time thereafter, upon notice to the Participant, immediately cancel the Award without payment due thereon, in which case the Participant shall have no further rights with respect to the Award.

[Signature page follows]
The Company, by its duly authorized officer, and the Participant have executed this Agreement as of the Date of Grant.

THE COMPANY

By: __________________________
Name: _________________________
Title: __________________________

Agreed and Accepted:

THE PARTICIPANT

By ____________________________
[Participant’s Name]

[Signature Page to Restricted Stock Unit Award Agreement]
EMPLOYEE STOCK PURCHASE PLAN

1. **Purpose.** The purpose of the Plan is to provide eligible Employees with a means of acquiring an equity interest in the Company through payroll deductions or other contributions to enhance such Employees’ sense of participation in the affairs of the Company. This Plan shall apply to Offering Periods beginning on or after the effective date of the initial public offering of the Shares, as determined by the Committee.

This Plan includes two components: (a) a component intended to qualify as an “employee stock purchase plan” under Section 423 of the Code (the “423 Component”), the provisions of which shall be construed consistent with the requirements of Section 423 of the Code; and (b) a component that does not qualify as an “employee stock purchase plan” under Section 423 of the Code (the “Non-423 Component”). Options shall be granted under both components, consistent with the terms of the Plan, pursuant to rules, procedures or sub-plans adopted by the Committee. Except as otherwise provided in this Plan or determined by the Committee in a manner consistent with this Plan, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

2. **Definitions.** As used herein, the terms set forth below have the meanings assigned to them in this Section 2 and shall include the plural as well as the singular.

   “1933 Act” means the Securities Act of 1933, as amended.


   “Board” means the Board of Directors of the Company.

   “Business Day” means a day on which the Exchange is open for trading.

   “Brokerage Account” means the account in which the Purchased Shares are held.

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

   “Committee” means the Leadership Development & Compensation Committee of the Board, or the designee of the Leadership Development & Compensation Committee.

   “Company” means McAfee Corp., a Delaware corporation.

   “Compensation” means the base pay received by a Participant, plus commissions, overtime and regular annual, quarterly and monthly cash bonuses payable pursuant to a short-term cash incentive plan and vacation, holiday and sick pay, in each case, from the Company, FTW or any of their respective subsidiaries. Compensation does not include: (1) income related to stock option awards, restricted stock unit grants, and other equity incentive awards (including but not limited to those originally issued by FTW); (2) sign-on bonuses, retention bonuses, stipends, or other non-recurring or special bonuses; (3) expense reimbursements; (4) relocation-related payments; (5) benefit plan payments (including but not limited to short-term disability pay, long-term disability pay, maternity pay, military pay, tuition reimbursement and adoption assistance); (6) payments related to the death of a Participant; (7) income from non-cash and fringe benefits; (8) severance payments; (9) “cash out” payments of vacation or other paid time off, or (10) other forms of compensation or income not specifically listed herein.

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“Employee” means any individual who is a common law employee of the Company or any other Participating Affiliate. For purposes of this Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or the Participating Affiliate, as appropriate, and only to the extent permitted under Section 423 of the Code with respect to the 423 Component. For purposes of the Plan, an individual who performs services for the Company or a Participating Affiliate pursuant to an agreement (written or oral) that classifies such individual’s relationship with the Company or a Participating Affiliate as other than a common law employee shall not otherwise (unless such individual is otherwise expressly classified as an employee by a different Participating Affiliate or by the Company) be considered an “employee” with respect to any period preceding the date on which a court or administrative agency issues a final determination that such individual is an “employee.”

“Enrollment Date” means the first Business Day of each Offering Period.

“Exchange” means the Nasdaq Global Select Market.

“Exercise Date” means the last Business Day of each Offering Period (or, if determined by the Committee, the Purchase Period, if different from the Offering Period).

“Fair Market Value” means the closing transaction price of a Share, as reported on the Exchange on the date as of which such value is being determined or, if the Shares are not listed on the Exchange as of an applicable date, the closing transaction price of a Share on the principal national stock exchange on which the Shares are traded on the date as of which such value is being determined or, if there are no reported transactions for such date, the closing transaction price of a Share on the immediately preceding date on which a closing transaction price was reported.

“FTW” means Foundation Technology Worldwide LLC, a Delaware limited liability company.

“Offering Period” means the six month period beginning on a date designated by the Committee and each successive six (6)-month period thereafter or such other period designated by the Committee; provided that in no event shall an Offering Period exceed 27 months, with the commencement of the first Offering Period to be determined by the Committee. Notwithstanding anything herein to the contrary, the Committee may establish an Offering Period with multiple Purchase Periods within such Offering Period.

“Option” means an option granted under this Plan that entitles a Participant to purchase Shares.

“Participant” means an Employee who satisfies the requirements of Sections 3 and 5 of this Plan.
“Participating Affiliate” means, (i) with respect to the 423 Component, each U.S. Subsidiary other than those for which the Committee or the Board has excluded its employees from participation in this Plan and (ii) with respect to the Non-423 Component, any entity that, directly or indirectly, is controlled by, controls or is under common control with the Company and/or any entity in which the Company has a significant equity interest, including, for the avoidance of doubt, FTW, McAfee, LLC and their respective subsidiaries, and excluding, in each case, any entity for which the Committee or the Board has excluded its employees from participation in this Plan.

“Plan” means this McAfee Employee Stock Purchase Plan.

“Purchase Account” means the notional bookkeeping account credited with the amount that shall be used to purchase Shares through the exercise of Options under this Plan.

“Purchase Period” means the period designated by Committee during which payroll deductions or other contributions of the Participants are credited under this Plan. Unless otherwise determined by the Committee, a Purchase Period will coincide with an entire Offering Period; provided that there may be multiple Purchase Periods within an Offering Period, if determined by the Committee prior to the commencement of the applicable Offering Period.

“Purchase Price” shall be the lesser of: (i) 85% percent of the Fair Market Value of a Share on the applicable Enrollment Date for an Offering Period and (ii) 85% percent of the Fair Market Value of a Share on the applicable Exercise Date; provided that the Committee may determine a different per share Purchase Price provided that such per share Purchase Price is communicated to Participants prior to the beginning of the Offering Period and provided that in no event shall such per share Purchase Price be less than the lesser of (i) 85% of the Fair Market Value of a Share on the applicable Enrollment Date or (ii) 85% of the Fair Market Value of a Share on the Exercise Date.

“Purchased Shares” means the full Shares issued or delivered pursuant to the exercise of Options under this Plan.

“Shares” means the Class A common stock, par value $0.001 per share, of the Company.

“Subsidiary” means an entity, U.S. or non-U.S., that is part of an unbroken chain of corporations beginning with the Company with respect to which not less than 50% of the voting equity is held by the Company or a Subsidiary, whether or not such entity now exists or is hereafter organized or acquired by the Company or a Subsidiary; provided that such entity is also a “subsidiary” within the meaning of Section 424 of the Code.

“Termination Date” means the date on which a Participant terminates employment or on which the Participant ceases to provide services to the Company or a Participating Affiliate as an employee, and specifically does not include any period following that date on which the Participant may be eligible for or in receipt of other payments from the Company including in lieu of notice or termination or severance pay or as wrongful dismissal damages.
3. **Eligibility.**

   (a) Only Employees of the Company or a Participating Affiliate shall be eligible to be granted Options under this Plan and, in no event may a Participant be granted an Option under this Plan following his or her Termination Date.

   (b) Any provisions of this Plan to the contrary notwithstanding, no Employee shall be granted an Option if (i) immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company and/or hold outstanding Options or options to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or of any of its Subsidiaries, (ii) such Option would permit his or her rights to purchase stock under all employee stock purchase plans of the Company and its Subsidiaries to accrue at a rate that exceeds $25,000 of the Fair Market Value of such stock (determined at the time each such Option is granted) for each calendar year in which such Option is outstanding at any time, or (iii) such Employee customarily works for the Company and its Participating Affiliates 20 hours per week or less or customarily works for the Company and its Participating Affiliates less than five months in a calendar year; provided, however, that in the case of clause (iii), the Committee may provide for alternative minimum hours or length of service eligibility criteria prior to the commencement of an Offering Period, subject to Section 423 of the Code with respect to the 423 Component. In addition, except as otherwise determined by the Committee prior to the commencement of an Offering Period, during any Offering Period, (x) no Participant may purchase more than the lesser of (i) the number of Shares that is equal to $30,000, divided by the closing transaction price of a Share on the immediately preceding date prior to the first day of the Offering Period on which a closing transaction price was reported or (ii) Shares and (y) in the aggregate, no more than one percent (1%) of the sum of (A) the number of Shares and (B) the number of FTW units (excluding those held by the Company), in each case, outstanding on the last day of the preceding fiscal year may be purchased.

4. **Exercise of an Option.** Options shall be automatically exercised on behalf of Participants in this Plan every Exercise Date, using payroll deductions or other contributions that have been credited to the Participants’ Purchase Accounts during the applicable Purchase Period or that have been retained from a prior Purchase Period pursuant to Section 8 hereof.

5. **Participation.**

   (a) An Employee shall be eligible to participate on the first Enrollment Date that occurs at least six months (or such other period of time determined by the Committee and, with respect to the 423 Component, consistent with Section 423 of the Code) after such Employee’s first date of employment with the Company or a Participating Affiliate; provided that such Employee properly completes and submits an election form in a manner and by the deadline prescribed by the Company.
An Employee who does not become a Participant on the first Enrollment Date on which he or she is eligible may thereafter become a Participant on any subsequent Enrollment Date by properly completing and submitting an election form in a manner and by the deadline prescribed by the Company.

Payroll deductions for a Participant shall commence on the first payroll date following the Enrollment Date and shall end on the last payroll date in the Purchase Period to which such authorization is applicable, unless sooner terminated by the Participant as provided in Section 12 hereof.

6. Payroll Deductions/ Other Participant Contributions.

(a) A Participant shall elect to have payroll deductions made during a Purchase Period equal to no less than 1% of the Participant’s Compensation up to a maximum of 15% (or such greater amount as the Committee establishes from time to time). The amount of such payroll deductions shall be in whole percentages. All payroll deductions made by a Participant shall be credited to his or her Purchase Account. A Participant who elects to have payroll deductions credited to his or her Purchase Account may not make any additional payments into his or her Purchase Account. Unless otherwise determined by the Company and subject to the other terms of this Plan, a Participant’s payroll deduction election will remain in effect for subsequent Offering Periods unless the Participant files an election change form in accordance with the procedures established by the Company not less than ten (10) business days (or such other deadline as is determined by the Company from time to time) prior to an applicable Purchase Period. Notwithstanding the foregoing or any provisions to the contrary in this Plan, the Company may (but is not required to) allow participants to make other contributions under this Plan via cash, check, or other means instead of payroll deductions, and for any Offering Period under the 423 Component, the Company determines that such other contributions are permissible under Section 423 of the Code. Any such other contributions must be made in a manner, in an amount and by the deadline prescribed by the Company and, once made, shall be credited to the Participant’s Purchase Account.

(b) Except as otherwise determined by the Committee prior to commencement of an Offering Period, (i) a Participant may not increase the rate of payroll deductions or contributions during an Offering Period and (ii) unless otherwise determined by the Company, one time during an Offering Period, a Participant may decrease the rate of payroll deductions or contributions with respect to such Offering Period. A Participant may change his or her payroll deduction percentage under subsection (a) above for any subsequent Offering Period by properly completing and submitting an election change form in accordance with the procedures prescribed by the Committee. The change in amount shall be effective as of the first Enrollment Date following the date of filing of the election change form.

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Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) hereof, a Participant’s payroll deductions may be decreased to 0% at any time during an Offering Period. Subject to Sections 13, 18 and 19 of the Plan, payroll deductions shall recommence at the rate provided in such Participant’s election form at the beginning of the first Offering Period which is scheduled to end in the calendar year following the calendar year in which the Participant’s payroll deductions were decreased to 0%, unless terminated by the Participant as provided in Section 12 hereof.

7. **Grant of Option.** On each Enrollment Date, each Participant in the applicable Offering Period shall be granted an Option to purchase, on the applicable Exercise Date, a number of full Shares determined by dividing the amount credited prior to such Exercise Date to the Participant’s Purchase Account as of the applicable Exercise Date by the applicable Purchase Price.

8. **Exercise of Option.** A Participant’s Option for the purchase of Shares shall be exercised automatically on the Exercise Date. The maximum number of Shares subject to the Option shall be purchased for such Participant at the applicable Purchase Price with the amount credited to his or her Purchase Account.

   No fractional Shares shall be purchased; any amounts credited to a Participant’s Purchase Account which are not sufficient to purchase a full Share shall continue to be credited to the Purchase Account for the next subsequent Purchase Period, subject to earlier withdrawal by the Participant as provided in Section 12 hereof. Subject to the immediately preceding sentence, all amounts credited to a Participant’s Purchase Account that are not used to purchase Shares on an Exercise Date, whether because of the Participant’s withdrawal from participation in an Offering Period or for any other reason, shall be distributed to the Participant or his or her designated beneficiary or legal representative, as applicable, without interest, as soon as administratively practicable after such withdrawal or other event, as applicable.

   During a Participant’s lifetime, a Participant’s Option is exercisable only by him or her. The Company shall, at its sole discretion, satisfy the exercise of all Participants’ Options for the purchase of Shares through (a) the issuance of authorized but unissued Shares, (b) the transfer of treasury Shares, (c) the purchase of Shares on behalf of the applicable Participants on the open market through an independent broker and/or (d) a combination of the foregoing.

9. **Issuance of Stock.** The Shares purchased by each Participant shall be issued in book entry form and shall be considered to be issued and outstanding to such Participant’s credit as of the Exercise Date. The Committee may permit or require that shares be deposited directly in a Brokerage Account with one or more brokers designated by the Committee or to one or more designated agents of the Company, and the Committee may use electronic or automated methods of share transfer. The Committee may require that Shares be retained with such brokers or agents for a designated period of time and/or may establish other procedures to permit tracking of disqualifying dispositions of such shares, and may also impose a transaction fee with respect to a sale of Shares issued to a Participant’s credit and held by such a broker or agent. The Committee may (but is not required to) permit Shares purchased under this Plan to participate in a dividend reinvestment plan or program maintained by the Company and establish a default method for the payment of dividends.
10. **Approval by Stockholders.** Notwithstanding the above, this Plan is expressly made subject to the approval of the stockholders of the Company within 12 months before or after the date this Plan is adopted by the Board. Such stockholder approval shall be obtained in the manner and to the degree required under applicable federal and state law. If this Plan is not so approved by the stockholders within 12 months before or after the date this Plan is adopted by the Board, this Plan shall not come into effect.

11. **Administration.**

   (a) **Powers and Duties of the Committee.** This Plan shall be administered by the Committee. Subject to the provisions of this Plan, Section 423 of the Code and the regulations thereunder with respect to the 423 Component, the Committee shall have the discretionary authority to determine the time and frequency of granting Options, the duration of Offering Periods and Purchase Periods, the terms and conditions of the Options and the number of Shares subject to each Option. The Committee shall also have the discretionary authority to do everything necessary and appropriate to administer the Plan, including, without limitation, interpreting the provisions of the Plan (but any such interpretation shall not be inconsistent with the provisions of Section 423 of the Code with respect to the 423 Component). All actions, decisions, and determinations of, and interpretations by the Committee with respect to this Plan shall be final and binding upon all Participants, upon their executors, administrators, personal representatives, heirs, and legatees and upon all other persons. No member of the Board or the Committee shall be liable for any action, decision, determination, or interpretation made in good faith with respect to this Plan or any Option granted hereunder. With respect to the 423 Component, an Offering Period shall be administered in a manner that is intended to provide that all Participants have the same rights and privileges as are provided by Section 423(b)(5) of the Code.

   (b) **Administrator.** The Company, Board or the Committee may delegate any or all of its powers or authority under this Plan, to the extent permitted by applicable law, to one or more members of the Board or the Committee or any officer or employee of the Company or any of its affiliates. The Company, Board or the Committee may also engage the services of a brokerage firm or financial institution (the “Administrator”) to perform certain ministerial and procedural duties under this Plan including, but not limited to, mailing and receiving notices contemplated under this Plan, determining the number of Purchased Shares for each Participant, maintaining or causing to be maintained the Purchase Account and the Brokerage Account, disbursing funds maintained in the Purchase Account or proceeds from the sale of Shares through the Brokerage Account, filing with the appropriate tax authorities proper tax returns and forms (including information returns) and providing to each Participant statements as required by law or regulation.
Indemnification. Each person who is or shall have been (i) a member of the Board, (ii) a member of the Committee, or (iii) an officer or employee of the Company or any of its affiliates to whom authority was delegated in relation to this Plan, shall be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under this Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company’s approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit or proceeding against him or her; provided that he or she shall give the Company a reasonable opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf; and provided further that this Section 11(c) shall not apply to any loss, cost, liability or expense that is a result of an indemnified person’s own willful misconduct or except as expressly provided by statute.

The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company’s certificate of incorporation or bylaws, any contract with the Company, as a matter of law, or otherwise, or of any power that the Company may have to indemnify them or hold them harmless.

12. Withdrawal. A Participant may withdraw from an Offering Period by properly completing and submitting to the Company a withdrawal form in accordance with the procedures prescribed by the Committee or the Company, which must be submitted prior to the date specified by the Committee or the Company before the Exercise Date. Upon withdrawal, any amounts credited to the Participant’s Purchase Account prior to the effective date of the Participant’s withdrawal from this Plan will be returned to the Participant, without interest, as soon as administratively practicable after such withdrawal. No further payroll deductions or contributions for the purchase of Shares will be made during the Offering Period in which the withdrawal occurs or any subsequent Offering Periods, unless (as to any subsequent Offering Period) the Participant properly completes and submits an election form, by the deadline prescribed by the Company. A Participant’s withdrawal from an Offering Period under this Plan will not, except as described in the immediately preceding sentence, have any effect upon his or her eligibility to participate in subsequent Offering Periods or in any similar plan that may hereafter be adopted by the Company or any of its affiliates.

13. Termination of Employment. On the Termination Date of a Participant for any reason prior to the applicable Exercise Date, whether voluntary or involuntary, and including termination of employment due to retirement, death or as a result of liquidation, dissolution, sale, merger or a similar event affecting the Company or a Participating Affiliate, the amount credited to his or her Purchase Account will be returned to him or her or, in the case of the Participant’s death, to the person or persons entitled thereto under Section 16, without interest, as soon as administratively practicable after such Termination Date and his or her Option will be automatically terminated.
14. Funding; Interest. Except as required by applicable law, the Company shall not be required to fund or set aside any funds or amounts under this Plan, including in respect of any Purchase Accounts. No interest shall accrue on the amounts credited to Purchase Accounts in this Plan.

15. Stock.
   (a) The stock subject to Options shall be common stock of the Company as traded on the Exchange or on such other exchange as the Shares may be listed from time to time.
   (b) Subject to adjustment upon changes in capitalization of the Company as provided in Section 18 hereof, the maximum number of Shares which shall be made available for sale under this Plan shall be ______ Shares. In addition, subject to adjustments upon changes in capitalization of the Company as provided in Section 18 hereof, the maximum number of Shares which shall be made available for sale under this Plan shall automatically increase on the first day of each fiscal year beginning with the first day of the second (2nd) fiscal year that begins after the date the Plan is adopted and ending with the first day of the tenth (10th) fiscal year that begins after the date the Plan is adopted, by an amount equal to the lesser of (i) one percent (1%) of the sum of (A) the number of Shares and (B) the number of FTW units (excluding those held by the Company), in each case, outstanding on the last day of the preceding fiscal year, or (ii) such number of Shares as may be established by the Board; provided that in no event shall the aggregate number of additional Shares made available under this Plan pursuant to this sentence exceed ______. If, on a given Exercise Date, the number of Shares with respect to which Options are to be exercised exceeds the number of Shares then available under this Plan, the Committee shall make a pro rata allocation of the Shares remaining available for purchase in as uniform a manner as shall be practicable and as it shall determine to be equitable.
   (c) A Participant shall have no interest or voting right in Shares covered by his or her Option until such Option has been exercised and the Participant has become a holder of record of Shares acquired pursuant to such exercise.

16. Designation of Beneficiary. The Committee may permit Participants to designate beneficiaries to receive any Purchased Shares or the amount credited to the Participant’s Purchase Account under this Plan in the event of such Participant’s death. Beneficiary designations shall be made in accordance with procedures prescribed by the Committee. If no properly designated beneficiary survives the Participant, the Purchased Shares and amount credited to the Participant’s Purchase Account, if any, will be distributed to the Participant’s estate.

17. Assignability of Options. Neither amounts credited to a Participant’s Purchase Account nor any rights with regard to the exercise of an Option or to receive Shares under this Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 16 hereof) by the Participant. Any such attempt at assignment, transfer, pledge, or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw from an Offering Period in accordance with Section 12 hereof.
18. **Adjustment of Number of Shares Subject to Options.**

(a) **Adjustment.** Subject to any required action by the stockholders of the Company, the maximum number and kind of securities available for purchase under this Plan, as well as the price per security, the number of securities covered by each Option under this Plan which has not yet been exercised and all limits denominated in shares under the Plan shall be appropriately adjusted in the event of any equity restructuring (within the meaning of Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation—Stock Compensation or any successor or replacement accounting standard), such as a stock split, reverse stock split, stock dividend, recapitalization through a large, nonrecurring cash dividend, combination or reclassification of the common stock of the Company. Such adjustment shall be made by the Board or the Committee, whose determination in that respect shall be final, binding, and conclusive. If any such adjustment would result in a fractional security being available under this Plan, such fractional security shall be disregarded. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option. The Options granted pursuant to the 423 Component shall not be adjusted in a manner that causes such Options to fail to qualify as options issued pursuant to an “employee stock purchase plan” within the meaning of Section 423 of the Code.

(b) **Dissolution or Liquidation.** Unless otherwise determined by the Board, in the event of the planned dissolution or liquidation of the Company, the Offering Period then in progress will terminate immediately prior to the consummation of such proposed action, unless an earlier date is otherwise provided by the Committee or the Board, and the Board may either provide for the purchase of Shares as of the date on which such Offering Period terminates (which will be deemed to occur in all events prior to the consummation of such proposed action, if falling on the same date) or return to each Participant the amount credited to such Participant’s Purchase Account.

(c) **Merger or Asset Sale.** In the event of a Change in Control (as defined in the Company’s 2020 Omnibus Incentive Plan) or the merger of the Company with or into another corporation, each outstanding Option shall be assumed or a substantially similar option substituted by the successor corporation or a parent or subsidiary of the successor corporation, unless the Board or the Committee determines, in the exercise of its sole discretion, that in lieu of such assumption or substitution to either terminate all outstanding Options and return to each Participant the amounts credited to such Participant’s Purchase Account or to provide for the Offering Period in progress to end on a date prior to the date of the Company’s consummation of such Change in Control or merger, resulting in the Exercise Date occurring as of the last Business Day of such shortened Offering Period.
19. **Amendments or Termination of this Plan.**

(a) Subject to any stockholder approval required by applicable law, regulation or Exchange or other applicable stock exchange rule, the Board or the Committee may at any time and for any reason amend, modify, suspend, discontinue or terminate this Plan without notice; provided that the terms of any amendment to the Plan or any offering hereunder must be in writing or in electronic form.

(b) Without stockholder consent, the Board or the Committee shall be entitled to change the Purchase Price, Offering Periods, Purchase Periods, eligibility requirements, limit or increase the frequency and/or number of changes in the amount withheld during a Purchase Period, return all amounts in Purchase Accounts to holder of such account, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in an amount less than or greater than the amount designated by a Participant in order to adjust for delays or mistakes in the Company’s processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Shares for each Participant properly correspond with amounts withheld from the Participant’s Compensation, and establish such other limitations or procedures as the Board or the Committee determines in its sole discretion advisable which are consistent with this Plan; provided that changes to (i) the Purchase Price, (ii) the Offering Period, (iii) the Purchase Period, (iv) the maximum percentage of Compensation that may be deducted pursuant to Section 6(a) or (v) the maximum number of Shares that may be purchased in a Purchase Period, shall not be effective until communicated to Participants.

20. **No Other Obligations.** The receipt of an Option pursuant to this Plan shall impose no obligation upon the Participant to purchase any Shares covered by such Option. Nor shall the granting of an Option pursuant to this Plan constitute an agreement or an understanding, express or implied, on the part of the Company or any of its affiliates to employ the Participant for any specified period.

21. **Notices and Communication.** Any notice or other form of communication which the Company or a Participant may be required or permitted to give to the other shall be provided through such means as designated by the Committee, including but not limited to any paper or electronic method.

22. **Condition upon Issuance of Shares.**

(a) Shares shall not be issued with respect to an Option unless the exercise of such Option and the issuance and delivery of such Shares pursuant thereto shall comply with all applicable provisions of law, U.S. or non-U.S., including, without limitation, the 1933 Act and the 1934 Act and the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.
(b) As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the
time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute
such Shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable
provisions of law.

23. **General Compliance.** This Plan will be administered, and Options will be exercised in compliance with the 1933 Act, 1934 Act and all other
applicable securities laws and Company policies, including without limitation, any insider trading policy of the Company.

24. **Term of this Plan.** This Plan shall become effective upon the earlier to occur of (i) its adoption by the Board and (ii) its approval by the
stockholders of the Company (the “Effective Date”), and shall continue in effect until the earlier of (A) the termination of this Plan pursuant to
Section 19 hereof and (B) the tenth anniversary of the Effective Date, with no new Offering Periods commencing on or after such tenth
anniversary.

25. **Governing Law.** This Plan and all Options granted hereunder shall be construed in accordance with and governed by the laws of the State of
Delaware without reference to choice of law principles and subject in all cases to the Code and the regulations thereunder with respect to the 423
Component. By electing to participate in this Plan, each Participant agrees or will be deemed to have agreed to (i) submit irrevocably and
unconditionally to the jurisdiction of the federal and state courts located within the geographic boundaries of the United States District Court for
the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Plan or any award, (ii) not
commence any suit, action or other proceeding arising out of or based upon this Plan or any award, except in the federal and state courts located
within the geographic boundaries of the United States District Court for the District of Delaware, and (iii) waive, by way of motion
as a defense or otherwise, in any such suit, action or proceeding, any claim that he or she is not subject personally to the jurisdiction of the above-
named courts that his or her property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an
inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Plan or the subject matter thereof may not be enforced
in or by such court. Further, by electing to participate in this Plan, each Participant waives (or will be deemed to have waived), to the maximum
extent permitted under applicable law, any right to a trial by jury in any action, proceeding or counterclaim concerning any rights under this Plan,
or under any amendment, waiver, consent, instrument, document or other agreement delivered or which in the future may be delivered in
connection therewith, and agrees (or will be deemed to have agreed) that any such action, proceedings or counterclaim will be tried before a court
and not before a jury. By electing to participate in this Plan, each Participant certifies that no officer, representative, or attorney of the Company
has represented, expressly or otherwise, that the Company would not, in the event of any action, proceeding, or counterclaim, seek to enforce the
foregoing waivers.
Notwithstanding anything to the contrary in this Plan, nothing herein is to be construed as limiting the ability of the Company (or any of its Participating Affiliates) and a Participant to agree to submit any dispute arising under the terms of this Plan to binding arbitration or as limiting the ability of the Company (or any of its Participating Affiliates) to require any individual to agree to submit such disputes to binding arbitration as a condition of receiving an award hereunder.

26. **Non-U.S. Participants.** Without the amendment of this Plan, the Company may provide for the participation in this Plan by Employees who are subject to the laws of non-U.S. countries or jurisdictions on such terms and conditions additional to or different from those specified in this Plan as may in the judgment of the Company be necessary or desirable to foster and promote achievement of the purposes of this Plan and, in furtherance of such purposes the Company may make such modifications, amendments, procedures, subplans and the like as may be necessary or advisable to comply with provisions of laws of other countries or jurisdictions in which the Company or the Participating Affiliates operate or have employees. Each subplan shall constitute a separate “offering” under this Plan in accordance with Treas. Reg. §1.423-2(a) and, to the extent inconsistent with the requirements of Section 423, any such subplan shall be considered part of the Non-423 Component, and rights granted thereunder shall not be required by the terms of this Plan to comply with Section 423 of the Code.

27. **Sections 423 and 409A.** The 423 Component shall be exempt from the application of Section 409A of the Code, and any ambiguities herein shall be interpreted to so be exempt from Section 409A of the Code. The Non-423 Component is intended to be exempt from the application of Section 409A of the Code under the short-term deferral exception and any ambiguities shall be construed and interpreted in accordance with such intent. In furtherance of the foregoing and notwithstanding any provision in this Plan to the contrary, if the Committee determines that an Option granted under this Plan may be subject to Section 409A of the Code or that any provision in this Plan would cause an Option to be subject to Section 409A, the Committee may amend the terms of this Plan and/or of an outstanding Option granted under this Plan, or take such other action the Committee determines is necessary or appropriate, in each case, without the participant’s consent, to exempt any outstanding Option or future Option that may be granted under this Plan from or to allow any such Options to comply with Section 409A of the Code. Notwithstanding the foregoing, neither the Company, the Board, the Committee nor any person acting on their behalf shall have any liability to a Participant or any other party by reason of any acceleration of income, any additional tax, or any other tax or liability asserted by reason of the failure of any Option or this Plan to be exempt from or compliant with Section 423 of the Code, Section 409A of the Code or by reason of any other tax resulting from a Participant’s participation in the Plan.

28. **Taxes.** Payroll deductions will be made on an after-tax basis. The Committee and the Company will have the right, as a condition to exercising an Option, to make such provision as it deems necessary to satisfy its obligations to withhold U.S. federal, state or local and non-U.S. income or other taxes incurred by reason of the exercise of the Option and/or the purchase or disposition of Shares under this Plan. In the discretion of the Committee and the Company and subject to applicable law (including, if applicable, requirements for exemption from Section 16 of the 1934 Act), such tax obligations may
be paid in whole or in part by delivery of Shares to the Company, including Shares purchased under this Plan, valued at Fair Market Value, but not in excess of the maximum statutory amounts required to be withheld. Without limiting the foregoing, the Committee or the Company may require (and by becoming a Participant in the Plan, the Participant agrees) that a Participant, as a condition to the exercise of an Option under this Plan, deliver an amount in cash necessary to satisfy all applicable withholding obligations in respect of such exercise and, if such condition is not satisfied by a Participant within ten (10) days following an otherwise applicable Exercise Date, the amount in such Participant’s Participant Account will be returned to him or her by the Company.
1. DEFINED TERMS

Exhibit A, which is incorporated by reference herein, defines certain terms used in the Plan and sets forth operational rules related to those terms.

2. PURPOSE

The Plan has been established to advance the interests of the Company and its Affiliates by providing for the grant of cash-based incentive Awards to Participants.

3. ADMINISTRATION

The Administrator shall administer the Plan and shall have discretionary authority, subject only to the express provisions of the Plan, to interpret the Plan and any Award; to determine eligibility for and grant Awards; to adjust the Performance Criterion or Criteria applicable to Awards; to determine, modify, accelerate or waive the terms and conditions of any Award; to determine the form of settlement of Awards; to prescribe forms, rules and procedures relating to the Plan and Awards; and to otherwise do all things necessary or desirable to carry out the purposes of the Plan or any Award. Determination made under the Plan and/or with respect to Awards need not be uniform among Participants. All determinations of the Administrator made with respect to the Plan or any Award are conclusive and shall bind all persons.

4. ELIGIBILITY; PARTICIPATION

The Administrator may select Participants from among executive officers and other key employees of the Company and its Affiliates.

5. GRANT OF AWARDS

A Participant who is granted an Award will be entitled to a payment, if any, in respect of the Award only if all conditions to payment have been satisfied (or deemed to have been satisfied) in accordance with the Plan and the terms of the Award. By accepting (or being deemed to have accepted) an Award, the Participant agrees or will be deemed to have agreed to the terms and conditions of the Award and the Plan. The Administrator will select the Participants, if any, who receive Awards for each Performance Period and, for each Award, will establish the following:

(a) the Performance Criterion or Criteria applicable to the Award;
(b) the amount or amounts that will be payable (subject to adjustment in accordance with Section 6) if the Performance Criterion or Criteria are achieved in whole or in part; and
(c) such other terms and conditions as the Administrator determines with respect to the Award.
The Administrator may, but need not, provide that Awards will be evidenced by a written agreement, written notice or other written documentation, but in the event of any dispute regarding whether an Award has been made, the Participant must provide clear and convincing evidence that an Award has been made.

6. DETERMINATION OF PERFORMANCE; AMOUNTS PAYABLE

As soon as reasonably practicable after the end of the applicable Performance Period, the Administrator will determine whether and to what extent, if at all, the Performance Criterion or Criteria applicable to each Award granted for such Performance Period have been satisfied. The Administrator will then determine the amount payable, if any, under each Award. The Administrator may, in its sole discretion and with or without specifying its reasons for doing so, after determining the amount that would otherwise be payable in respect of any Award, adjust the actual payment, if any, to be made with respect to such Award. The Administrator may exercise the discretion described in the immediately preceding sentence either in individual cases or in ways that affect more than one Participant. In each case, the Administrator’s discretionary determination, which may affect different Awards differently, is conclusive and bind all persons.

7. PAYMENTS UNDER AWARDS

The Administrator will determine the payment dates for Awards under the Plan. Except as otherwise determined by the Administrator or the Company:

(a) all payments under the Plan will be made, if at all, not later than two and one-half months after the end of the fiscal year in which the Performance Period ends; provided, that the Administrator may (but is not required to) authorize elective deferrals of any Award payments in accordance with the deferral rules of Section 409A;

(b) payment will not be made with respect to an Award unless the Participant has remained employed with the Company and its Affiliates through the date of payment; and

(c) awards under the Plan are intended to qualify for exemption from Section 409A of the Code and shall be construed and administered accordingly.

8. TAX WITHHOLDING

All payments under the Plan will be reduced by all tax and other amounts required to be withheld with respect to the payment. Any amounts withheld pursuant to this Section 9 will be treated as though such payment had been made directly to the Participant.

9. AMENDMENT AND TERMINATION

The Administrator may at any time or times amend the Plan or any outstanding Award for any purpose which may at the time be permitted by applicable law, and may at any time terminate the Plan as to any future grants of Awards. Any amendments to the Plan will be conditioned upon stockholder approval only to the extent, if any, such approval is required by applicable law (including the Code) or stock exchange requirements, as determined by the Administrator.

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10. RECOVERY OF COMPENSATION

Unless otherwise determined by the Administrator in writing, each Award will be subject to any applicable policy of the Company or any of its subsidiaries or Affiliates that provides for forfeiture, disgorgement, recoupment or clawback with respect to incentive compensation that includes Awards under the Plan and will be further subject to forfeiture and disgorgement to the extent required by law or applicable stock exchange listing standards, including, without limitation, Section 10D of the Securities Exchange Act of 1934, as amended. Subject to the terms of any applicable Award agreement, each Participant, by accepting or being deemed to have accepted an Award under the Plan, agrees (or will be deemed to have agreed) to the terms of this Section 10 and any clawback, recoupment or similar policy of the Company or any of its subsidiaries or Affiliates and further agrees (or will be deemed to have further agreed) to cooperate fully with the Administrator, and to cause any and all permitted transferees of the Participant to cooperate fully with the Administrator, to effectuate any forfeiture or disgorgement described in this Section 10. Neither the Administrator nor the Company nor any other person, other than the Participant and his or her permitted transferees, if any, will be responsible for any adverse tax or other consequences to a Participant or his or her permitted transferees, if any, that may arise in connection with this Section 10.

11. MISCELLANEOUS

(a) Waiver of Jury Trial. By accepting or being deemed to have accepted an Award under the Plan, each Participant waives (or will be deemed to have waived), to the maximum extent permitted under applicable law, any right to a trial by jury in any action, proceeding or counterclaim concerning any rights under the Plan or any Award, or under any amendment, waiver, consent, instrument, document or other agreement delivered or which in the future may be delivered in connection therewith, and agrees (or will be deemed to have agreed) that any such action, proceedings or counterclaim will be tried before a court and not before a jury, subject to the last sentence of this Section 11(a). By accepting or being deemed to have accepted an Award under the Plan, each Participant certifies that no officer, representative, or attorney of the Company or any of its Affiliates has represented, expressly or otherwise, that the Company would not, in the event of any action, proceeding or counterclaim, seek to enforce the foregoing waivers. Notwithstanding anything to the contrary in the Plan, nothing herein is to be construed as limiting the ability of the Company and a Participant to agree (or superseding any prior agreement) to submit any dispute arising under the terms of the Plan or any Award to binding arbitration or as limiting the ability of the Company to require any individual to agree to submit such disputes to binding arbitration as a condition of receiving an Award hereunder.

(b) Limitation of Liability. Notwithstanding anything to the contrary in the Plan or any Award, none of the Company nor any of its Affiliates, nor any of its subsidiaries, nor the Administrator, nor any person acting on behalf of the Company, its Affiliates, any of its subsidiaries, or the Administrator, will be liable to any Participant, to any permitted transferee, to the estate or beneficiary of any Participant or any permitted transferee, or to any other person by reason of any acceleration of income, any additional tax, or any penalty, interest or other liability asserted by reason of the failure of an Award to satisfy the requirements of Section 409A or by reason of Section 4999 of the Code (or, in each case, any similar state or local tax law) or otherwise asserted with respect to any Award.
(c) **Unfunded Plan.** The Company’s obligations under the Plan are unfunded, and no Participant will have any right to specific assets of the Company in respect of any Equity Award. Participants will be general unsecured creditors of the Company with respect to any amounts due or payable under the Plan.

(d) **Governing Law.** Except as otherwise provided by the express terms of an Award, the domestic substantive laws of the State of Delaware govern the provisions of the Plan and of Awards under the Plan and all claims or disputes arising out of or based upon the Plan or any Award under the Plan or relating to the subject matter hereof or thereof without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction; provided that this provision shall not be construed to require an employee who primarily resides and works in California to deprive the employee of the substantive protection of California law with respect to a controversy arising in California, in each case, except to the extent permitted by Section 925(e) of the California Labor Code.

(e) **Jurisdiction.** Unless otherwise provided in an Award Agreement or otherwise agreed in a writing with the Company or any of its Affiliates (including an arbitration agreement or arrangement described in Section 11(a)), by accepting (or being deemed to have accepted) an Award, each Participant agrees or will be deemed to have agreed to (i) submit irrevocably and unconditionally to the jurisdiction of the federal and state courts located within the geographic boundaries of the United States District Court of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon the Plan or any Award; (ii) not commence any suit, action or other proceeding arising out of or based upon the Plan or any Award, except in the federal and state courts located within the geographic boundaries of the United States District Court Delaware; and (iii) waive, and not assert, by way of motion as a defense or otherwise, in any such suit, action or proceeding, any claim that he or she is not subject personally to the jurisdiction of the above-named courts that his or her property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that the Plan or any Award or the subject matter thereof may not be enforced in or by such court. Notwithstanding the foregoing, this provision shall not be construed to require an employee who primarily resides and works in California to adjudicate outside of California a claim arising in California, except to the extent permitted by Section 925(e) of the California Labor Code.

(f) **Other Compensation Arrangements.** The existence of the Plan or the grant of any Award will not affect the right of the Company or any of its Affiliates or subsidiaries to grant any person bonuses or other compensation in addition to Awards under the Plan.

(g) **Rights Limited.** Nothing in the Plan or any Award will be construed as giving any person the right to be granted an Award or to continued employment or service with the Company or any of its Affiliates. The loss of any Award will not constitute an element of damages in the event of a termination of a Participant’s employment for any reason, even if the termination is in violation of an obligation of the Company or any of its Affiliates to the Participant.
(h) **Effective Date.** The Plan will be effective upon adoption of the Plan by the Administrator and will supersede and replace the Company’s annual cash bonus program with respect to awards granted to eligible executive officers and employees for fiscal years beginning after the date of adoption. For the avoidance of doubt, the Plan will not supersede any provisions in an individual employment agreement, offer letter, severance agreement or similar written agreement between a Participant and the Company or one of its Affiliates regarding any individual terms that apply with respect to such Participant’s annual or other periodic cash bonus opportunities.

*The remainder of this page is intentionally left blank.*
EXHIBIT A

Definitions

The following terms, when used in the Plan, have the meanings and are subject to the provisions set forth below:

“Administrator”: The Compensation Committee, except that the Compensation Committee may delegate (i) to one or more of its members (or one or more other members of the Board, including the full Board) such of its duties, powers and responsibilities as it may determine; (ii) to one or more officers of the Company the power to grant Awards or otherwise make determinations under the Plan or with respect to an Award, in each case, to the extent permitted by applicable law; and (iii) to such employees or other persons as it determines such ministerial tasks as it deems appropriate. For purposes of the Plan, the term “Administrator” will include the Board, the Compensation Committee, and the person or persons delegated authority under the Plan to the extent of such delegation, as applicable.

“Affiliate”: Any entity that, directly or indirectly, is controlled by, controls or is under common control with the Company and/or any entity in which the Company has a significant equity interest, in either case, as determined by the Board, including, for the avoidance of doubt, FTW, McAfee, LLC and their respective subsidiaries.

“Award”: A cash bonus award that is granted to a Participant with respect to a Performance Period. An Award opportunity may be expressed as a percentage of the Participant’s base salary, as a fixed dollar amount, or in such other form determined by the Administrator.

“Board”: The Board of Directors of the Company.

“Code”: The U.S. Internal Revenue Code of 1986, as from time to time amended and in effect, or any successor statute as from time to time in effect.

“Company”: McAfee Corp., a Delaware corporation or any successor thereto.

“Compensation Committee”: The Leadership Development and Compensation Committee of the Board.

“FTW”: Foundation Technology Worldwide LLC, a Delaware limited liability company.

“Participant”: A person who is granted an Award by the Administrator under the Plan.

“Performance Criteria”: Specified criteria, other than the mere continuation of Employment or the mere passage of time, the satisfaction of which is a condition for the grant, exercisability, vesting or full enjoyment of an Award as determined by the Administrator. A Performance Criterion and any targets with respect thereto need not be based upon an increase, a positive or improved result or avoidance of loss and may be applied to a Participant individually, or to a business unit or division of the Company or to the Company as a whole and may relate to any criterion or any combination of criteria determined by the Administrator (measured either absolutely or comparatively (including, without limitation, by reference to an index or indices or
the performance of one or more companies), which may be determined either on a consolidated basis or, as the context permits, on a divisional, subsidiary, line of business, project or geographical basis or in combinations thereof and subject to such adjustments, if any, as the Administrator specifies. A Performance Criterion may also be based on individual performance and/or subjective performance criteria. The Administrator may provide that one or more of the Performance Criteria applicable to such Award will be adjusted in a manner to reflect events (for example, but without limitation, acquisitions or dispositions) occurring during the Performance Period that affect the applicable Performance Criterion or Criteria.

“Performance Period”: A specified performance period, consisting of the Company’s fiscal year or such other period as the Administrator determines.

“Plan”: The McAfee Executive Cash Incentive Plan, as from time to time amended and in effect.

“Section 409A”: Section 409A of the Code and the regulations thereunder.
FOUNDATION TECHNOLOGY WORLDWIDE LLC
CLASS A UNIT SUBSCRIPTION AGREEMENT

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR ANY JURISDICTION AND ARE BEING OFFERED AND SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND THE SECURITIES LAWS OF OTHER RELEVANT JURISDICTIONS. THE SECURITIES PURCHASED HEREUNDER ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE UNDER A LIMITED LIABILITY COMPANY AGREEMENT AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND OTHER APPLICABLE LAWS PURSUANT TO REGISTRATION OR EXEMPTION FROM REGISTRATION REQUIREMENTS THEREUNDER AND UNDER SUCH LIMITED LIABILITY COMPANY AGREEMENT.

This Class A Unit Subscription Agreement (this “Agreement”) is entered into as of [ ], by and between Foundation Technology Worldwide LLC, a Delaware limited liability company (the “Company”) and [ ] (the “Subscriber”).

RECITALS

The Subscriber is willing to purchase, and the Company is willing to issue and sell to the Subscriber pursuant to the terms of this Agreement, the Foundation Technology Worldwide LLC Equity Investment Plan (the “Plan”), the amended and restated limited liability company agreement of the Company (as amended from time to time, the “LLC Agreement”) and the Accession Agreement (as defined herein) in exchange for the Subscription Price (as defined below), the number of Class A Units of the Company set forth opposite the name of the Subscriber on Schedule 1 hereto (the “Units”), all on the terms and subject to the conditions set forth herein and in the LLC Agreement.

Subject to the limitations contained in Rule 506 and 701, as applicable, under the Securities Act, the issuance and sale of the Units under this Agreement are intended to be exempt from the registration requirements of the Securities Act pursuant to Rule 506 or 701.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions. Except as defined herein, capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the LLC Agreement.
2. Sale and Purchase of Units.

2.1. On the terms and subject to the conditions hereof, in the Plan, the LLC Agreement and the Accession Agreement, the Company hereby agrees to sell to the Subscriber, and by his, her or its acceptance hereof the Subscriber agrees to purchase from the Company for investment, the Units for the subscription price set forth on Schedule 1 hereto (the “Subscription Price”).

2.2. The Subscriber may pay the Subscription Price by check or by wire transfer in accordance with instructions provided by the Company. No certificate is required to be issued in connection with the purchase hereunder and the Subscriber’s ownership of the Units will be evidenced by the books and records of the Company.

3. Representations, Warranties, and Agreements.

3.1. Representations, Warranties, and Agreements of the Company. The Company represents and warrants to the Subscriber that the statements in this Section 3.1 are true and correct as of the date of this Agreement.

3.1.1 Organization of the Company. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware.

3.1.2 Authorization, Execution and Delivery of this Agreement. The Company has the capacity, full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and constitutes the valid and legally binding obligation of the Company, enforceable in accordance with its terms and conditions. The Company need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

3.1.3 Valid Issuance of the Units. The Units that are being issued to the Subscriber hereunder, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer contained or referred to herein, in the LLC Agreement or under applicable state and federal securities laws.
3.2. Representations, Warranties, and Agreements of the Subscriber. The Subscriber represents and warrants to, and agrees with, the Company that the statements in this Section 3.2 are true and correct as of the date of this Agreement:

3.2.1 Authorization, Execution and Delivery of this Agreement. The Subscriber has full legal capacity, full legal right, power and authority, and all authorization and approval required by law to execute and deliver this Agreement and the LLC Agreement, to perform his, her or its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. This Agreement and the LLC Agreement have each been duly executed and delivered by the Subscriber and are each legal, valid and binding obligations of the Subscriber enforceable against him, her or it in accordance with their respective terms and conditions. The Subscriber need not give any notice to, make any filings with, or obtain any authorization, consent, or approval of any person or entity, including, without limitation, any government or governmental agency in order to consummate the transactions contemplated by this Agreement or the LLC Agreement.

3.2.2 No Registration. The Subscriber has been advised that the Units have not been, and are not expected to be, registered under the Securities Act on the basis that the transactions contemplated hereby are exempt from such registration requirements pursuant to regulations promulgated by the Securities and Exchange Commission, and that reliance by the Company on such exemptions is predicated in part on the Subscriber’s representations set forth herein, and, as a result, the Units cannot be resold unless they are registered under the Securities Act and applicable state securities laws (and the securities law of any other applicable jurisdiction) or unless an exemption from such registration requirements is available. The Subscriber understands that, in addition to the restrictions on transfer imposed by the Securities Act and any applicable state securities laws (and securities law of any other applicable jurisdiction), the LLC Agreement contains provisions that further restrict transfer of the Units. The Subscriber has been advised and is aware that the Company is not under any obligation to effect any such registration with respect to the Units or to file for or comply with any exemption from registration.

3.2.3 Subscription for Investment. The Subscriber is purchasing the Units to be acquired by the Subscriber hereunder for his, her or its own account and not with a view to, or for resale in connection with, the distribution or public offering thereof in violation of the Securities Act, or any other applicable federal, state or foreign securities laws or regulations. The Subscriber understands that the holding of the Units involves substantial risk. There is not expected to be any public or other market for the Units, and there can be no assurance as to when, or whether, any such market will develop. The Subscriber understands that there are substantial restrictions on the transferability of the Units and, accordingly, it may not be possible to liquidate his, her or its investment in the Company.

3.2.4 Knowledge and Experience. The Subscriber has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of subscribing for Units under this Agreement, is able to incur a complete loss of such investment and is able to bear the economic risk of such investment for an indefinite period of time.

3.2.5 Accredited Investor. The Subscriber is an accredited investor as that term is defined in Rule 501 of Regulation D under the Securities Act, unless otherwise indicated on the Accredited Investor Questionnaire provided to the Company.
3.2.6 Disclosure.

(a) The Subscriber is employed by or provides services to the Company or one of its Affiliates. In connection with the Subscriber’s investment in the Units, the Company has made available to the Subscriber certain confidential information relating to the opportunity to invest in Units of the Company and describing the equity securities of the Company, including the Units, and certain risks associated with investing in such securities, including without limitation a confidential information memorandum containing a description of certain risk factors associated with such securities.

(b) The Subscriber has carefully considered the potential risks relating to the Company and the purchase of the Units. The Subscriber is familiar with and has been given access to all other information regarding the financial condition, properties, operations, prospects and the proposed business and operations of the Company and its Affiliates that the Subscriber has requested in order to evaluate his, her or its investment in the Company. During the course of the offering of the Units and prior to the date hereof, the Company has made available to the Subscriber the opportunity to ask questions of, and to receive answers from, persons acting on behalf of the Company concerning the terms and conditions of the offering of the Units, and to obtain any additional information desired by the Subscriber with respect to the Company and its Affiliates. The Subscriber has had an opportunity (a) to question, and to receive information from, the Company concerning the Company and the Subscriber’s investment in the Company and (b) to obtain additional information necessary to verify the accuracy of any information that the Subscriber deems relevant to make an informed investment decision as to the purchase of the Units.

(c) The Subscriber has carefully considered the potential risks relating to the Company and the purchase of the Units. The Subscriber has made, either alone or together with its advisors, such independent investigation of the Company and its Affiliates as the Subscriber deems to be, or his, her or its advisors deem to be, necessary or advisable in connection with this investment. The Subscriber understands that no federal or state agency has made any finding or determination as to the fairness of this investment.

3.2.7 No Representations or Warranties; Acknowledgments. No representations or warranties, oral or otherwise, have been made to the Subscriber or any party acting on the Subscriber’s behalf in connection with the offer and sale of the Units other than the representations and warranties specifically set forth in this Agreement. The Subscriber has had an opportunity, and has been urged and advised by the Company, to consult an independent financial, tax and legal advisor and the Subscriber’s decision to enter into this Agreement has been based solely upon the Subscriber’s evaluation. The Subscriber is aware that there are significant restrictions, including those provided for in the LLC Agreement, on the Subscriber’s ability to transfer or dispose of the Units.
4. Company Call Option.

4.1. Upon (i) the termination of the Subscriber’s employment or other service relationship with the Company or any of its Affiliates for any reason, or (ii) the Subscriber’s violation of any restrictive covenant with the Company or any of its Affiliates (including without limitation any restrictive covenants relating to noncompetition, nonsolicitation, confidential information, or assignment of intellectual property) (each, a “Restrictive Covenant”), the Company may, within one hundred and eighty days (180) days following the latest to occur of (a) such termination of employment, (b) the date that is six (6) months plus one (1) day following the date the Units were acquired, and (c) the date the Company obtains actual knowledge of the violation of such Restrictive Covenant, repurchase all or any of the Units (whether held by the Subscriber or a direct or indirect transferee of such Unit or Units) for cash at their aggregate Fair Market Value determined on the date that the notice of the repurchase is sent to the Subscriber (or his, her or its transferee).

4.2. In addition, to the extent permitted by applicable law, in the event that the Subscriber commences employment or a service relationship with a “Competitor” (or similar or correlative term, as defined in the applicable Restrictive Covenant), other than an Affiliate of the Company, that is not in violation of any Restrictive Covenant, the Company may, within one hundred and eighty (180) days following the later to occur of (a) the date on which the Company obtained actual knowledge of the commencement of such employment or other service relationship or (b) the date that is six (6) months plus one (1) day following the date the Units were acquired, repurchase all or any of the Units (whether held by the Subscriber or a direct or indirect transferee of such Unit or Units) for cash at their aggregate Fair Market Value determined on the date that notice of the repurchase is sent to the Subscriber (or his, her or its transferee).

4.3. Notwithstanding anything in this Agreement or the LLC Agreement to the contrary, if required under the Company’s debt covenants, the Company may repurchase such Unit or Units with a promissory note.

4.4. The closing of any repurchase effected pursuant to this Section 4 shall occur not later than the end of the fiscal quarter following the fiscal quarter in which the Company delivers to the repurchase notice contemplated hereby (provided, that such time may be extended as necessary to comply with requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or applicable foreign antitrust laws or other applicable legal requirements) at the principal office of the Company, or at such other time and location as the parties to such repurchase may mutually determine. As a condition of entering into this Agreement, the Subscriber agrees that at any time after entering into this Agreement that he, she or it shall execute, and cause any of his, her or its transferees to execute, any documents (including a power of attorney and/or a Unit repurchase agreement containing customary representations and a release of claims) determined by the Company to be necessary or appropriate to give effect to the rights and obligations set forth herein.

4.5. This Section 4 shall expire upon the closing of an Initial Public Offering.
5. **Accession to LLC Agreement.** By executing this Agreement, the Subscriber hereby agrees, in respect of the Units, to be bound by the terms of the LLC Agreement as a Member, and to execute an Accession Agreement to the LLC Agreement substantially in the form of Exhibit A hereto (the “Accession Agreement”) concurrently with the execution of this Agreement. The Subscriber and the Company acknowledge and agree that the Accession Agreement will provide that (i) Section 12.1 of the LLC Agreement shall not apply to the Units and (ii) the Subscriber will not be treated as an Affiliate of the TPG Investor for purposes of Section 12.2 of the LLC Agreement. Notwithstanding anything to the contrary contained in the LLC Agreement or any other document, including the Accession Agreement, the Subscriber shall have no right to access or review Exhibit 3.1 to the LLC Agreement without the prior written consent of the Board of Managers, which may be granted or withheld in the Board of Managers’ sole discretion. For the avoidance of doubt, this Section 5 shall survive the termination of this Agreement.

6. **Entity Subscribers.** Notwithstanding anything herein to the contrary, in the event that the Subscriber is an entity, the Subscriber and the individual in respect of whom the subscription opportunity is being offered (the “Service Provider”) agree as follows:

   6.1. The Subscriber is a trust or other estate planning vehicle the beneficiaries of which include only the Service Provider and Members of the Immediate Family (as defined in the LLC Agreement) of the Service Provider;

   6.2. For so long as the Subscriber continues to hold any of the Units, neither the Subscriber nor the Service Provider will permit any interest in the Subscriber to be transferred to any Person other than the Service Provider or a Member of the Immediate Family of the Service Provider in accordance with the requirements of the LLC Agreement; and

   6.3. For purposes of Section 4 of this Agreement (and any other provisions related to the provision of services by the Subscriber to the Company or any of its Affiliates), all references to the Subscriber shall be construed as references to the Service Provider.

   6.4. For purposes of Section 3 of this Agreement (and any other representations contained herein), all references to the Subscriber shall be deemed to also refer to the Service Provider (with it being acknowledged, however, that the Subscriber alone is acquiring the Units and that Service Provider’s representations are made in connection with the acquisition of the Units by the Subscriber as the Person making the decision on behalf of the Subscriber).

7. **Legends.**

   7.1. **Restrictive Securities Act Legend.** In the event that any of the Units are certificated, he certificate or certificates evidencing such Units may bear such restrictive legends as the Company and/or the Company’s counsel may deem necessary or advisable under applicable law or pursuant to this Agreement, including, without limitation, the following legend:
7.2. **Termination of Restrictions.** The legends authorized by this Section 7 shall be removed by the Company upon request without charge as to any particular Units (a) when, in the opinion of counsel reasonably acceptable to the Company, such restrictions are no longer required in order to assure compliance with the Securities Act or (b) when such Units shall have been registered under the Securities Act.

8. **Power of Attorney.** The Subscriber hereby irrevocably constitutes and appoints the Board of Managers (or its designee) with full power of substitution, acting jointly or severally, as his, her or its attorney-in-fact and agent to sign, execute and deliver, in the Subscriber’s name and on his, her or its behalf, all or any such agreement, deeds, instruments, documents and/or any counterpart thereof or certificates or to take any such action as it deems necessary from time to time or as is required under any applicable law to admit the Subscriber as a Member of the Company or to conduct the business of the Company, including (without limitation) the power and authority to sign, execute and deliver (or attach signature pages to) (i) the LLC Agreement, (ii) any amendment to the LLC Agreement adopted in accordance with its terms, (iii) any agreements, deeds, instruments or documents reasonably necessary to satisfy the Subscriber’s obligations under Section 4 hereof, (iv) any proxy related to the 280G Vote (as defined in the LLC Agreement) authorized by Section 20.3 of the LLC Agreement, under which the Chief Executive Officer of the Company or a substitute appointed by the TPG Investor may approve or disapprove certain compensatory payments subject to Section 280G of the Code, or (v) such documents as the Board of Managers deems necessary in good faith to effectuate the customary lock-up following a Public Offering as set forth in Section 11.1(e) of the LLC Agreement. This power of attorney is given to secure the obligations of the Subscriber hereunder and deemed coupled with an interest of the Board of Managers and is irrevocable.

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9.1. Entire Agreement. This Agreement, the Plan, the LLC Agreement, the Accession Agreement and the other agreements referred to herein set forth the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior contemporaneous understandings, agreements, or representations by or between the parties hereto, written or oral, to the extent they related in any way to the subject matter hereof.

9.2. Amendment and Waivers. No amendment or waiver of any provision of this Agreement will be valid unless the same is in writing and signed by each of the parties hereto; provided, however, that any direct or indirect amendment or modification to Section 4, Section 5, this Section 9.2, Section 9.3, Section 9.4, Section 9.5 or Section 9.9 shall require the prior written consent of the Intel Majority. Any waiver of any term or condition will not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any party hereto to assert any of its rights hereunder will not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

9.3. Succession and Assignment. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and representatives; provided, however, that the Subscriber may not assign any of the Subscriber’s rights hereunder except in connection with a transfer of the Units in compliance with the terms and conditions of the LLC Agreement and this Agreement. Any purported assignment of this Agreement made in breach of this Section 9.3 shall be void ab initio and of no force or effect.

9.4. No Third Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, Intel and its Subsidiaries shall be express third-party beneficiaries of Section 5 and Section 9.9 hereof.

9.5. Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery hereof and transfer of any Units.

9.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

9.7. Electronic Signatures. The signature to this Agreement on behalf of the Company may be an electronic signature that will be treated as an original signature for all purposes hereunder and such electronic signature will be binding against the Company and will create a legally binding agreement when this Agreement is countersigned by the Subscriber.

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9.8. **Headings.** The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

9.9. **Indemnity.** The Subscriber hereby agrees to indemnify and hold harmless the Company and its Members (other than the Subscriber), Affiliates, directors and officers and their successors and permitted assignees (other than those of the Subscriber and its Affiliates) from and against all losses, damages, liabilities and expenses (including without limitation reasonable attorneys fees and charges) resulting from any breach of any representation, warranty or agreement of such indemnifying party in this Agreement or any misrepresentation by such indemnifying party in this Agreement. If and to the extent that the foregoing undertaking may be unavailable or unenforceable for any reason, the Subscriber hereby agrees to make the maximum contribution to the payment and satisfaction of each of such losses, damages, liabilities and expenses which is permissible under applicable law.

9.10. **No Recourse.** Notwithstanding anything that may be expressed or implied in this Agreement, each of the Company and the Subscriber covenants, agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any current or future director, officer, employee, partner, shareholder, subscriber, member or trustee of the Company or the Subscriber or of any partner, member, subscriber, trustee, affiliate or assignee thereof, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of the Company or any current or future director, officer, employee, partner, shareholder, subscriber, member or trustee of any affiliate or assignee thereof, as such for any obligation of the Subscriber under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

9.11. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

9.12. **Notices.** Any notice, request or other communication given in connection with this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered to the recipient (provided written acknowledgement of receipt is obtained), (ii) two days after being sent by reputable overnight courier service or (iii) three days after being mailed by first class mail, return receipt requested, to the recipient at the address below indicated:
If to the Company:

[ ]

With a copy (not constituting notice) to:

Ropes & Gray LLP
The Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Alfred Rose and Michael Roh
alfred.rose@ropesgray.com and
michael.roh@ropesgray.com

If to the Subscriber:

To the address(es) set forth opposite the Subscriber’s name on Schedule 1

10. Acknowledgments by Subscriber. The Subscriber acknowledges that nothing in this Agreement alters the nature of the Subscriber’s employment or other services with the Company or any of its Affiliates, as applicable.


11.1. Governing Law. The validity, construction and effect of this Agreement, and of any determinations or decisions made by the Company relating to this Agreement, and the rights of any and all Persons having, or claiming to have, any interest under this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law. Except as otherwise specified in an employment agreement between the Subscriber and the Company or any of its Affiliates, any suit with respect to this Agreement will be brought in the federal or state courts in the districts which include the State of Delaware, and the Subscriber agrees and submits to the personal jurisdiction and venue thereof.

11.2. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, BY ENTERING INTO THIS AGREEMENT, THE SUBSCRIBER WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BY ENTERING INTO THIS AGREEMENT, EACH SUBSCRIBER CERTIFIES THAT NO OFFICER, REPRESENTATIVE, OR ATTORNEY OF THE COMPANY OR ANY AFFILIATE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE COMPANY WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS.
11.3. **Reliance.** Each of the parties hereto acknowledges that he or it has been informed by each other party that the provisions of this Section 11 constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby.

[Remainder of the page intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the terms hereof, have caused this Agreement to be executed as of the date first above written by their officers or other representatives thereunto duly authorized.

THE COMPANY: Foundation Technology Worldwide LLC

By:

Name: [    ]
Title: [    ]
THE SUBSCRIBER:
Sign Name:

By: [    ]
Title: [    ]

(TITLE ONLY REQUIRED FOR EXECUTION ON BEHALF OF ENTITY SUBSCRIBERS)

THE SERVICE PROVIDER:
Sign Name:

[    ]

(SERVICE PROVIDER’S SIGNATURE ONLY REQUIRED IF THE SUBSCRIBER IS AN ENTITY)

[Subscriber Signature Page to Subscription Agreement]
**Exhibit A**

**Schedule 1**

to Class A Unit Subscription Agreement

<table>
<thead>
<tr>
<th>Name and Address of Subscriber</th>
<th>Total Class A Units</th>
<th>Total Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
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</tbody>
</table>

[Subscriber Signature Page to Subscription Agreement]
NON-EMPLOYEE DIRECTOR COMPENSATION POLICY
OF
McAfee Corp.
SECTION I
INTRODUCTION

Effective as of the initial public offering (the “IPO”) of the Class A common stock of McAfee Corp. (the “Corporation”), each individual who provides services to the Corporation as a member of the board of directors of the Corporation (the “Board of Directors”), other than (i) each individual who is employed by the Corporation or one of its affiliates and (ii) each individual who is employed by TPG, Intel or Thoma Bravo or any of their affiliates (excluding the Corporation, Foundation Technology Worldwide LLC (“FTW”) and their respective subsidiaries) (each covered director, a “Covered Non-Employee Director”), will be entitled to receive the following amounts of compensation:

<table>
<thead>
<tr>
<th>Type of Compensation</th>
<th>Amount and Form of Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual cash retainer</td>
<td>$75,000</td>
</tr>
<tr>
<td>Additional annual cash retainer for members of the Audit Committee</td>
<td>$10,000 ($25,000 in lieu of such amount for the chair of the Audit Committee)</td>
</tr>
<tr>
<td>Additional annual cash retainer for members of the Leadership Development and Compensation Committee (&quot;LDCC&quot;)</td>
<td>$7,500 ($20,000 in lieu of such amount for the chair of the LDCC)</td>
</tr>
<tr>
<td>Additional annual cash retainer for members of the Nominating and Corporate Governance Committee</td>
<td>$5,000 ($15,000 in lieu of such amount for the chair of the Nominating and Corporate Governance Committee)</td>
</tr>
<tr>
<td>Payment of Amounts in Cash</td>
<td>All cash fees will be payable in arrears on a quarterly basis (or, if earlier, within 30 days following the earlier resignation or removal of the Covered Non-Employee Director), unless otherwise determined by the Board of Directors or the LDCC.</td>
</tr>
<tr>
<td>Type of Compensation</td>
<td>Amount and Form of Payment</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Election to receive shares in lieu of cash retainers</td>
<td>If approved by the Board of Directors, the Corporation may allow Covered Non-Employee Directors to receive shares of capital stock of the Corporation in lieu of all or a portion of the cash fees payable hereunder on such terms as the Board of Directors (or the LDCC) may determine.</td>
</tr>
<tr>
<td>Annual equity retainer</td>
<td>Commencing in calendar year 2021, on the date of the first meeting of the Board of Directors following each annual meeting of stockholders of the Corporation, each Covered Non-Employee Director shall be granted a number of restricted stock units determined by dividing $225,000 by the closing price of a share of Class A common stock on the last trading day immediately preceding the date of the first meeting of the Board of Directors following the applicable annual meeting of the stockholders of the Corporation (rounded down to the nearest whole number of shares), such restricted stock units to vest on the earliest of (i) the first anniversary of the date of grant, (ii) the Covered Non-Employee Director’s death or permanent disability (as determined by the Board of Directors or the LDCC) or (iii) a Change in Control (as defined in the Corporation’s 2020 Omnibus Incentive Plan), subject, in each case, to the Covered Non-Employee Director’s continued service as a member of the Board of Directors through the applicable vesting date; provided that if the Corporation’s next annual meeting of stockholders that follows the grant date is less than one year after the prior annual meeting of the Corporation’s stockholders, and the Covered Non-Employee Director continues to serve on the Board of Directors through immediately prior to such meeting but does not stand for re-election, is not elected or is not nominated for re-election at such meeting, any then unvested restricted stock units granted in the immediately preceding twelve (12) months shall accelerate and vest in full as of the immediately prior to such meeting.</td>
</tr>
<tr>
<td>Additional equity terms</td>
<td>Each restricted stock unit will be subject to the terms and conditions of the Corporation’s 2020 Omnibus Incentive Plan (or any successor plan) and any applicable award agreement or award notice.</td>
</tr>
<tr>
<td>Pro-Rated Compensation</td>
<td>All cash fees will be prorated for any fiscal quarter of partial service, based on the number of calendar days the Covered Non-Employee Director was a member of the Board of Directors or the applicable committee, in a manner determined by the Board of Directors (or the LDCC).</td>
</tr>
<tr>
<td>Type of Compensation</td>
<td>Amount and Form of Payment</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>A Covered Non-Employee Director whose</td>
<td>appointment or election to the Board of Directors is effective at a time other than the Corporation’s annual meeting of stockholders will receive a pro-rated grant of restricted stock units intended to cover the period from his or her appointment or election, as applicable, until the Corporation’s next annual meeting of the stockholders following such appointment or election, as applicable, with the manner of pro-ration and other applicable terms and conditions determined by the Board of Directors (or the LDCC).</td>
</tr>
<tr>
<td>In addition, following the IPO, any Covered</td>
<td>Non-Employee Director who served on the board of managers of FTW prior to the IPO, will receive a pro-rated grant of restricted stock units intended to cover the period from the date his or her last grant of FTW restricted stock units vests (or, if he or she did not previously receive such a grant, the date of his or her appointment or election, as applicable) until the Corporation’s next annual meeting of the stockholders, with the manner of pro-ration and other applicable terms and conditions determined by the Board of Directors (or the LDCC).</td>
</tr>
<tr>
<td>Reimbursement of Expenses</td>
<td>Covered Non-Employee Directors and other members of the Board of Directors will be reimbursed by the Corporation for reasonable travel and other expenses incurred in connection with the board member’s attendance at Board of Directors and committee meetings, in accordance with the Corporation’s policies as in effect from time to time.</td>
</tr>
<tr>
<td>Annual Limit on Covered</td>
<td>Non-Employee Director Compensation                                                                                                                   The aggregate value of cash compensation and the grant date fair value of shares of capital stock of the Corporation that may be paid or granted during any fiscal year of the Corporation shall not exceed the amount prescribed in the Corporation’s 2020 Omnibus Incentive Plan (or any successor plan).</td>
</tr>
<tr>
<td>Amendment and Termination</td>
<td>The Board of Directors (or the LDCC) may amend or terminate this Non-Employee Director Compensation Policy at any time.</td>
</tr>
</tbody>
</table>

Effective: [DATE]
Equity Adjustment Agreement for Senior Executives

This agreement (this “Agreement”) describes certain adjustments that are being made to outstanding equity or equity-based incentive awards of Foundation Technology Worldwide LLC (“FTW”) and any FTW Class A Units received under such awards (collectively, “Awards”) issued under the McAfee 2017 Management Incentive Plan (formerly known as the Foundation Technology Worldwide LLC 2017 Management Incentive Plan) (as amended from time to time, the “2017 Plan”), as well as purchased or otherwise acquired FTW Class A Units (“Co-Invest Equity”), in connection with the initial public offering of shares of Class A common stock of McAfee Corp. (“McAfee”) and the related reorganization transactions (together, the “IPO”). FTW, its subsidiaries, and McAfee are collectively referred to in this Agreement as the “Company”.

In connection with the IPO, McAfee is becoming an equityholder in FTW and shares of Class A common stock of McAfee (“McAfee Shares”) are expected to become publicly traded on the NASDAQ Global Select Market.

You are receiving this Agreement because you and/or persons related to you (which we together refer to as “you” or the “Participant”) currently hold one or more Awards (“your Awards”) and/or Co-Invest Equity (“your Co-Invest Equity”) that will be adjusted in connection with IPO. The IPO constitutes a Covered Transaction under the 2017 Plan and this Agreement (including all terms set forth herein) reflects the arrangement governing the terms of such Covered Transaction. The purpose of this Agreement is to set forth certain adjustments that are being made to your Awards and/or your Co-Invest Equity that, notwithstanding anything to the contrary in your Award Agreement(s), the 2017 Plan, any subscription agreement and/or equity investment plan related to your Co-Invest Equity and/or the FTW limited liability company agreement (as amended and/or amended and restated from time to time, including the amendment and restatement effective in connection with the consummation of the IPO (unless otherwise expressly provided herein), the “LLC Agreement”) or any other plan or agreement applicable to you or to which you are a party, apply to your Award(s) and/or your Co-Invest Equity as of and following the effective time of this Agreement, as described below.

1. Effective Time; Defined Terms; No Call Option.

   a. This Agreement, in its entirety, is effective as of immediately prior to the consummation of the IPO (the “Effective Time”). Notwithstanding the foregoing, if the IPO is not consummated on or before March 31, 2021, this Agreement will be null and void and have no force or effect. In the event that any Awards or Co-Invest Equity described herein are not outstanding as of immediately prior to the Effective Time, the treatment described herein shall not apply and such Awards and/or Co-Invest Equity will be treated in accordance with its otherwise applicable terms.
b. Capitalized terms used and not defined herein have the respective meanings ascribed to such terms in the 2017 Plan, a relevant award agreement, a relevant subscription agreement or the LLC Agreement, in each case, as applicable. All references in the remainder of this Agreement and in the governing documents to Award(s) and Co-Invest Equity dated prior to the date hereof to “RSUs”, “Class A Units”, and “Management Incentive Units” (and, in each case, similar and correlative terms) are to be construed to refer to “FTW RSUs”, “FTW Class A Units”, or “FTW Management Incentive Units” (or, in each case, similar and correlative terms), respectively, after taking into account the adjustments described herein and Reorganization Transactions contemplated by Section 8 below. With respect to any Award (or portion thereof) that is being converted into an award in respect of McAfee Shares, references in the governing documents to the “Company” shall be construed to refer to (or to also include) McAfee to the extent necessary or appropriate to give effect to such assumption or conversion and the transactions described herein, in each case, as determined by the Administrator of the 2017 Plan in its sole discretion.

c. Notwithstanding anything herein or in the LLC Agreement to the contrary, the call option set forth in Section 4.03 of the LLC Agreement shall not apply to your FTW Class A Units or FTW MIUs.

2. FTW Class A Units.

a. FTW Class A Units issued to you prior to the Effective Time (however acquired) may, at your election, but subject to the terms of the LLC Agreement (including the right of McAfee to cash settle exchanged FTW Class A Units), be exchanged for McAfee Shares (but, notwithstanding any term of the LLC Agreement to the contrary, in no event earlier than January 1, 2021). Any election to exchange FTW Class A Units for McAfee Shares will be subject to the additional terms and conditions specified in the LLC Agreement and McAfee Shares acquired upon any such exchange will be subject to the transfer restrictions described herein.

b. Any FTW Class A Units that you do not exchange for McAfee Shares (and that are not cash settled pursuant to the LLC Agreement) will continue to be governed by the terms of the governing documents pursuant to which they were issued and the LLC Agreement (as the same have been or may be amended from time to time, including as set forth herein).

3. FTW Management Incentive Units.

i. Any unvested FTW Management Incentive Units (“FTW MIUs”) you hold will remain outstanding and continue to vest on the same time-based vesting schedule that applies to them currently, and will remain subject to the same performance-vesting conditions that apply to them currently (if any), except as adjusted in this Agreement. Vested FTW MIUs (including FTW MIUs that, by their terms as adjusted herein, become vested following the IPO), may, at the election of the Participant, but not earlier than January 1, 2021 and subject to the other terms of the LLC Agreement (including the right of McAfee to cash settle exchanged Units of FTW), be exchanged for McAfee Shares after first being converted to FTW Class A Units. Except as
expressly set forth herein, all FTW MIUs will remain subject to the terms of the governing documents pursuant to which they were issued and the LLC Agreement (as the same have been or may be amended from time to time) and McAfee Shares acquired upon any such exchange will be subject to the transfer restrictions described herein.

b. Any FTW MIUs that are not exchanged for McAfee Shares (and that are not cash settled pursuant to the LLC Agreement) will continue to be governed by the terms of the governing documents pursuant to which they were issued and the LLC Agreement (as the same have been or may be amended from time to time, including as set forth herein).

4. FTW RSUs, PSUs, CRSUs and CPSUs

a. As of the IPO, FTW “RSUs” (including those with time- and/or performance-based vesting conditions (including those sometimes referred to as “PSUs”), collectively, “FTW RSUs”) and cash-settled FTW RSUs (and including those with time- and/or performance-based vesting conditions (and including those sometimes referred to as “CPSUs”), collectively, “FTW CRSUs”) that by their terms become payable in connection with the IPO will be settled in McAfee Shares, unless otherwise set forth in the Non-U.S. Addendum, based on the price of a share of Class A common stock of McAfee as of the Effective Time (or, if applicable, as of the date of your earlier termination of employment). Except as otherwise permitted by the Company pursuant to Section 9 below or as otherwise set forth in the Non-U.S. Addendum, a portion of such McAfee Shares will be sold pursuant to a broker-assisted sale in order to generate sufficient cash to satisfy applicable withholding taxes, if any (at up to maximum statutory withholding rates) in respect of such FTW RSUs and/or FTW CRSUs, as applicable.

b. Unvested FTW RSUs and unvested FTW CRSUs will be, as of the Effective Time, assumed by McAfee and converted into an equal number of restricted stock units that will be settled in McAfee Shares (“McAfee Converted RSUs”) once vested, which will be eligible to vest on the same time-based vesting schedule, and subject to the same performance-based vesting conditions (if any), except as adjusted in this Agreement, as applied to the original FTW RSUs or FTW CRSUs, as applicable.

c. Except as otherwise expressly provided herein, McAfee Converted RSUs will remain subject to the same terms that applied to original FTW RSUs or FTW CRSUs, as applicable, by the terms of the governing documents pursuant to which they were issued (as the same have been or may be amended from time to time, including as set forth herein).

5. Tax Receivable Payments. You will be eligible for payments under that certain Tax Receivable Agreement by and among McAfee Corp., FTW and certain other parties, as amended from time to time, pursuant to its terms.


a. Notwithstanding anything herein to the contrary, and without limiting the terms set forth herein, all Units of FTW and all McAfee Shares received in respect of your Awards and your Co-Invest Equity will be subject to transfer restrictions during the 180-day period that follows the IPO (the “Lock-Up Period”) as agreed upon with the underwriters in connection with the IPO, which will be communicated to you separately.
b. In addition, notwithstanding anything herein or any other document to the contrary, in connection with any public offering of capital stock of McAfee that follows the IPO, if determined by the Board or the underwriters managing such public offering, you will be subject to a customary lock-up following such public offering restricting sales of (and similar transactions in) McAfee Shares, Units of FTW and all other classes of capital stock of McAfee; provided that the Company shall use commercially reasonable efforts to provide that any such lock-up will not exceed 90 days and will include a customary exception for sales pursuant to a Rule 10b5-1 plan. The Board (or its delegate) shall act as the attorney-in-fact for you to act on your behalf in executing any such lock-up agreement and such power-of-attorney will survive your bankruptcy, dissolution, death, adjudication of incompetence or insanity giving such power and the transfer or assignment of all or any part of your equity interest in McAfee or FTW.

7. Additional Transfer Restrictions. Notwithstanding anything herein to the contrary, after the expiration of the Lock-Up Period (and, for the avoidance of doubt, without limiting the other limitations set forth or referenced herein), all FTW Class A Units, FTW MIUs and McAfee Shares constituting or received in respect of FTW Class A Units, FTW MIUs or other Awards held by you will be subject to the following additional transfer restrictions:

a. Except as provided in Section 7(b) and (c) below, in each calendar quarter beginning with the calendar quarter in which the Lock-Up Period expires, sales of McAfee Shares by you will be limited to the sum of: (i) 5.0% of vested McAfee Shares (including, without limitation, vested MAC Conversion Shares (as defined below)) you hold after having received them in respect of Awards (or in exchange for FTW Class A Units received under Awards or for Co-Invest Equity, as applicable), (ii) 5.0% of the number of McAfee Shares you are eligible to receive in respect of the exchange of vested FTW Class A Units you hold, and (iii) the number of McAfee Shares you are eligible to receive in respect of the exchange of 5.0% of the number of vested FTW MIUs subject to each grant you hold (the sum of the McAfee Shares described in clauses (i) through (iii) (without regard to the 5.0% limit applicable to each clause), collectively, your “Eligible Equity” and the number of McAfee Shares represented by Eligible Equity (taking into account the 5.0% limit applicable in respect of each of clauses (i), (ii) and (iii)) that are eligible for sale in any given calendar quarter, the “Quarterly Max”). For purposes of determining your Eligible Equity and Quarterly Max, and for purposes of determining the number of McAfee Shares you may sell pursuant to this Section 7(a) and Section 7(c), any McAfee Shares you acquire but are then sold to pay withholding taxes (up to maximum statutory withholding rates) in a broker-assisted or similar transaction will be disregarded (and will not be subject to the restrictions set forth in this Section 7(a) and Section 7(c)). For purposes of Section 7(a), (b) and (c), the amount of your Eligible Equity and your Quarterly Max will be determined as of the first trading day of the applicable calendar quarter. Regardless of whether you choose to sell Eligible Equity up to the Quarterly Max for a given calendar quarter, you will be treated as having sold such amount for purposes of determining the amount of Eligible Equity and the Quarterly Max for each subsequent calendar quarter; provided that if the amount of the Quarterly Max exceeds the number of McAfee Shares that constitute or relate to your Eligible Equity that you sell in a given calendar quarter, such difference (the “Quarterly Shortfall”) may be carried forward for up to the next three calendar quarters and will (to the extent unused and without double counting) be deemed to increase your Quarterly Max during such quarters; and provided further that to the extent that all or any portion of a given Quarterly Shortfall expires without being used the McAfee Shares related to such portion will again be counted as part of your Eligible Equity immediately following such expiration.
b. As of each date on which TPG sells McAfee Shares or FTW Class A Units (an “Applicable TPG Sale Date”), the following will be calculated:

i. the “Applicable TPG Selldown Percentage”, which is the percentage determined based on (x) the number McAfee Shares and/or FTW Class A Units sold by TPG on the Applicable TPG Sale Date, divided by (y) the number of FTW Class A Units plus the number of McAfee Shares held by TPG as of immediately prior to the Effective Time (after giving effect to the Reorganization Transactions); and

ii. your “Pro Rata Selldown Amount”, which is the number of McAfee Shares determined by (x) multiplying (1) the Applicable TPG Selldown Percentage by (2) your Eligible Equity as of the beginning of the applicable calendar quarter in which the Applicable TPG Sale Date falls, and then subtracting (y) the number of McAfee Shares related to your Eligible Equity that you sold between the beginning of the applicable calendar in which the Applicable TPG Sale Date falls and the Applicable TPG Sale Date.

c. If, as of an Applicable TPG Sale Date, your Pro Rata Selldown Amount exceeds your then available Quarterly Max (for the avoidance of doubt, taking into account its increase by unused and unexpired Quarterly Shortfalls), then:

i. you will become eligible to sell an additional number of McAfee Shares equal to the Pro Rata Selldown Amount; and

ii. the Quarterly Max (as adjusted to the extent of any unused and unexpired Quarterly Shortfalls) for the remainder of the applicable calendar quarter in which the Applicable TPG Sale Date falls will be reduced to zero, all then unused Quarterly Shortfalls will be eliminated and the calculation of the Quarterly Max under Section 7(a) (and your related opportunity to sell McAfee Shares) will commence again in the next calendar quarter that follows the Applicable TPG Sale Date.

In addition, on the date on which the Lock-Up Period expires, the calculation under Section 7(b) will be made based on any McAfee Shares, if any, sold by TPG in the IPO (treating the IPO as the Applicable TPG Sale Date) and such calculation shall be applied under this Section 7(c) to determine whether you will become eligible as of the date the Lock-Up Period expires to sell any McAfee Shares pursuant to this Section 7(c).

If you do not sell the full number of McAfee Shares that become eligible for sale under this Section 7(c) (the “Unused Pro Rata Sale Amount”) as of the date on which a relevant determination is first made, you will retain the right to sell a number of McAfee Shares equal to the Unused Pro Rata Sale Amount (reduced by any subsequent sales of McAfee Shares by you pursuant to this Section 7(c) and the other limitations set forth herein).

d. You will be subject to the rules, policies and agreements of McAfee, FTW, and their affiliates, which may change from time to time in accordance with applicable laws. Such policies may include, without limitation, equity ownership requirements, clawback policies, insider trading policies, registration rights agreements and policies regarding hedging or pledging of securities. In the event of any conflict between such policy, rule or agreement and this Agreement, the more restrictive of the two shall apply.
e. All sales of McAfee Shares (including vested MAC Conversion Shares (as described below)) will be made (i) pursuant to pre-approved trading plans pursuant to Rule 10b5-1 under the U.S. Securities Exchange Act of 1934, as amended, with such plan being in a form reasonably acceptable to McAfee or (ii) when you are not otherwise in possession of material nonpublic information, subject, in each case, to the other limitations described herein.

f. All determinations under this Section 7 will be made by McAfee in good faith and once made will be final and binding on all persons. If there is any change in the capitalization of McAfee or FTW following the Reorganization Transactions that affects the calculations hereunder, such calculations will be equitably adjusted to reflect such change in capitalization, as determined by McAfee in good faith.

g. The restrictions set forth in this Section 7 (other than under Section 7(d), 8(e) and 8(h)) will cease to apply as of the earliest of (i) six (6) months after your employment and all other service relationships with the Company and its affiliates cease, (ii) the date on which TPG ceases to hold at least 10% of the combined FTW Class A Units, McAfee Shares or other equity securities into which such securities are converted or for which they are exchanged that it held as of immediately prior to the IPO and (iii) the date that is forty-two (42) months following the IPO.

h. You will be ineligible to transfer Units of FTW except (i) to an applicable permitted transferee in according with the terms of the LLC Agreement (in which case, such permitted transferee shall be subject to the terms and conditions of the LLC Agreement and as set forth herein mutatis mutandis) or (ii) in exchange for McAfee Shares on the terms set forth in the LLC Agreement.

8. Reorganization Transactions.

a. Prior to or concurrent with the consummation of the IPO, the equity of FTW, including your Awards and your Co-Invest Equity, may be split into a different number of Units of FTW and/or there may be a reorganization of FTW and its affiliates and/or McAfee (which may include a merger or similar transaction of FTW into an affiliate), in order to facilitate the IPO and the transactions contemplated hereby (the “Reorganization Transactions”). In connection with the Reorganization Transactions, your Awards and your Co-Invest Equity will be converted, exchanged and/or adjusted in accordance with the 2017 Plan, the LLC Agreement, the definitive documents that relate to the Reorganization Transactions and/or this Agreement.

b. Notwithstanding anything herein to the contrary, as part of the Reorganization Transactions, prior to the IPO, holders of Units of FTW may receive a distribution of shares in McAfee Acquisition Corp., which (if received) shall be exchanged for McAfee Shares (the “MAC Conversion Shares”). If the Units of FTW with respect to which MAC Conversion Shares are received were unvested at the time of such distribution, such MAC Conversion Shares will be subject to the same vesting schedule and performance-vesting conditions (if any) as those which applied to the unvested Units of FTW to which they relate, as adjusted by this Agreement.
Each Participant holding unvested MAC Conversion Shares will make an 83(b) election not later than fifteen (15) days following the Effective Time. The Lock-Up Period and the additional transfer restrictions described in this Agreement will apply with respect to MAC Conversion Shares. The number of MAC Conversion Shares issued to you will be (or has been) communicated to you separately.

9. **Withholding.** Notwithstanding anything herein to the contrary, if tax or other withholding is due in connection with any transaction contemplated hereby, McAfee may (i) at its election, reduce the number of McAfee Shares or other securities, property or rights delivered to you pursuant to this Agreement by a number of McAfee Shares or other securities, property or rights with an aggregate fair market value equal to the aggregate amount of such withholding at maximum statutory rates for U.S. federal, state, non-U.S. and other taxes (with any fractional McAfee Shares or other securities rounded down to the nearest whole share), (ii) if you and McAfee agree, permit you to deliver cash or cash equivalents in an amount necessary to satisfy such withholding obligations, or (iii) permit or require you to enter into a “broker-assisted” sale of McAfee Shares pursuant to which a number of McAfee Shares with an aggregate fair market value equal to the aggregate amount of such withholding at maximum statutory rates for U.S. federal, state, non-U.S. and other taxes (plus any applicable transaction fees) shall be sold with the net proceeds remitted directly to McAfee or an affiliate of McAfee designated by the Administrator. Any McAfee Shares or other securities, property or rights withheld pursuant to the immediately preceding sentence will be treated as having been delivered to you for all purposes.

10. **Certain Non-U.S. Persons.** Notwithstanding any provisions in this Agreement, the applicable terms set forth in the Non-U.S. Addendum for your country will supplement or supersede the terms set forth in this Agreement. Moreover, if you relocate to one of the countries included in the Non-U.S. Addendum, the additional terms and conditions for such country will apply to you, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Non-U.S. Addendum constitutes part of this Agreement.

11. **Participant Group.** In the event that “you” is construed to refer to a current or former individual employee of, or other service provider to, the Company, and related persons (e.g., permitted transferees of such individual), this Agreement shall be construed so all rights of such individual and such related persons shall be applied on a pro rata or other equitable basis among such individual and such other persons (e.g., rights to sell McAfee Shares pursuant to Section 7). Such individual, however, shall be responsible for ensuring the compliance of all persons related to such individual with the requirements hereunder and for obtaining from such requirements any agreements, consents or other documents that the Company may require to give effect to the provisions set forth herein from time to time. All determinations regarding allocations of rights and obligations among any such individual and any related persons will be made by the Company in good faith and will be binding on all persons.

12. **Required Actions.** You must sign (including by DocuSign or other electronic means, if required by the Company) and return this Agreement not later than 5:00 p.m. CDT on October 7, 2020. By delivering your executed signature page (or causing it to be delivered, including, if applicable, by electronic means), you will be confirming that: (a) you have reviewed and understand the terms set forth of this Agreement and agree to be bound thereby (notwithstanding any applicable local laws regarding the use or enforceability of electronic signatures); and (b) you authorize the Company to take all action it deems necessary or appropriate to effectuate the foregoing on behalf of you without further notice to date to effect such terms.
13. **Binding Effect.** This Agreement constitutes (and serves as your consent to) an amendment to the terms applicable to your Award(s), the LLC Agreement and any equity received thereunder and your Co-Invest Equity (as applicable) to the extent set forth herein, which (a) will be binding upon the executors, administrators, estates, heirs and legal successors of the Participant as well as any other persons as contemplated by Section 19.1 of the LLC Agreement as in effect as of April 3, 2017 through its amendment and restatement in connection with the IPO; (b) will be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of laws and (c) if applicable, will be subject to any existing arbitration agreement that you have with the Company. Except as described in this Agreement, your Award(s), any equity received thereunder and your Co-Invest Equity (as applicable) will remain subject to their existing terms.

[Remainder of Page Intentionally Left Blank]
ACKNOWLEDGED AND AGREED BY:

The Participant:
On behalf on himself or herself
and all related persons

Sign Name:

[Participant Name]

[Foundation Worldwide Technology LLC
Equity Adjustment Agreement Signature Page]
Non-US Addendum

Capitalized terms, unless explicitly defined in this Non-U.S. Addendum, shall have the meanings given to them in the Agreement.

Terms and Conditions

This Non-U.S. Addendum includes special terms and conditions that govern your Awards ("FTW Awards") and any equity-based incentive awards of McAfee you are receiving under the Agreement (including McAfee Shares, “McAfee Awards” and, together with FTW Awards, “Company Awards”), if you reside and/or work in one of the countries listed below. If you are a citizen or resident (or are considered as such for local law purposes) of a country other than the country in which you are currently residing and/or working, or if you transfer to another country after receiving Company Awards, the Company shall, in its discretion, determine to what extent the special terms and conditions contained herein shall be applicable to you.

Notifications

This Non-U.S. Addendum also includes information regarding exchange control, tax and certain other issues of which you should be aware with respect to Company Awards. The information is based on the exchange control, tax and other laws in effect in the respective countries as of September 2020. Such laws are often complex and change frequently. As a result, the Company strongly recommends that you not rely on the information contained herein as the only source of information relating to Company Awards, because the information may change after Company Awards are issued to you. In addition, the information is general in nature and may not apply to your particular situation, and the Company is not in a position to assure you of any particular result. Therefore, you should seek appropriate professional advice as to how the relevant laws in your country may apply to your individual situation.

If you are a citizen or resident (or are considered as such for local tax purposes) of a country other than the country in which you are currently residing and/or working, or if you transfer to another country after receiving Company Awards, the information contained herein may not be applicable to you in the same manner.

In addition, the Company expects to provide general country-by-country summaries of the tax consequences and certain other issues associated with the adjustment of your FTW Awards and grant of McAfee Awards under the Agreement. Tax laws often are complex and can change frequently. As a result, you should consult with your personal tax advisor for current information and further guidance regarding your personal tax liabilities and responsibilities associated with the adjustment of your FTW Awards, the grant, vesting and exercise of McAfee Awards, any dividends or distributions under Company Awards, and the sale of McAfee Shares.
ARGENTINA

Notifications

Securities Law Information. The McAfee Awards granted to you under the Agreement are not publicly offered or listed on any stock exchange in Argentina. The offer is private and not subject to any disclosure, prospectus or registration requirements in Argentina.

Exchange Control Information. Exchange control regulations in Argentina are subject to frequent change. You are solely responsible for complying with any applicable exchange control rules and should consult with your personal legal advisor prior to remitting proceeds from the sale of McAfee Shares, cash dividends paid on such shares, or any other cash payments under the Agreement (e.g., cash payment in lieu of TRA benefit).

AUSTRALIA

Notifications

Exchange Control Information. Exchange control reporting is required for cash transactions exceeding A$10,000 and international fund transfers of any amount. The Australian bank assisting with the transaction will file the report for you. If there is no Australian bank involved in the transfer, you will have to file the report.

CANADA

Terms and Conditions

The following terms and conditions apply if you are a Quebec resident:

Language Consent. The parties acknowledge that it is their express wish that the Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Consentement Relatif à la Langue. Les parties reconnaissent avoir exigé la rédaction en anglais de la convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement, à la présente convention.

Notifications

Securities Law Information. You are permitted to sell McAfee Shares acquired hereunder through the designated broker, if any, provided the resale of McAfee Shares takes place outside Canada through the facilities of a stock exchange on which they are listed.
FRANCE

Terms and Conditions

Language Consent. The parties acknowledge that it is their express wish that the Agreement, as well as all documents, notices and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

Consentement Relatif à la Langue. Les parties reconnaissent avoir exigé la rédaction en anglais de la convention, ainsi que de tous documents, avis et procédures judiciaires, exécutés, donnés ou intentés en vertu de, ou liés directement ou indirectement, à la présente convention.

GERMANY

Notifications

Exchange Control Information. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (Bundesbank). In case of payments received in connection with your Company Awards (including any proceeds realized upon the sale of McAfee Shares or the receipt of any dividends or cash payment in lieu of TRA benefit), the report must be filed electronically by the fifth day of the month following the month in which the payment is received. The form of report (Allgemeine Meldeportal Statistik) can be accessed via the Bundesbank’s website (www.bundesbank.de) and is available in both German and English.

HONG KONG

Notifications

Securities Law Notice. WARNING: The grant of McAfee Awards and the issuance of McAfee Shares under McAfee Awards do not constitute public offerings of securities under Hong Kong law and are available only to certain eligible employees. The Agreement and other incidental communication materials have not been prepared in accordance with and are not intended to constitute a “prospectus” for a public offering of securities under the applicable securities legislation in Hong Kong. In addition, the documents have not been reviewed by any regulatory authority in Hong Kong. McAfee Awards are intended only for your personal use, and may not be distributed to any other person. If you are in any doubt about any of the contents of the Agreement, you should obtain independent professional advice.

INDIA

Notifications

Exchange Control Information. You must repatriate to India any proceeds from the sale of McAfee Shares (settled under the Agreement or acquired upon vesting or exercise of McAfee Awards), or any dividends paid on such shares (and possibly also any cash payment in lieu of TRA benefit) within such period of time as will be required under applicable regulations. You should obtain a foreign inward remittance certificate (“FIRC”) from the bank where you deposit the foreign currency and maintain the FIRC as evidence of the repatriation of funds in the event the Reserve Bank of India, the Company or the Employer requests proof of repatriation.
IRELAND

Notifications

Director Notification Obligation. Directors, shadow directors and secretaries of an Irish affiliate of the Company whose interest in the Company represents more than 1% of the Company’s voting share capital must notify the Irish affiliate in writing when acquiring or disposing of their interest in the Company (e.g., McAfee Awards), when becoming aware of the event giving rise to the notification requirement, or when becoming a director or secretary if such an interest exists at the time. This notification requirement also applies to any rights or shares acquired by the director’s spouse or children under the age of 18 (whose interests will be attributed to the director, shadow director or secretary).

JAPAN

There are no country-specific provisions.

SINGAPORE

Notifications

Securities Law Information. The McAfee Awards are being granted pursuant to the “Qualifying Person” exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) (“SFA”) and not with a view to these equity awards being subsequently offered for sale to any other party. The Agreement and other related documents have not been lodged or registered as a prospectus with the Monetary Authority of Singapore.

Director Notification Obligation. The directors, associate directors and shadow directors of a Singapore affiliate are subject to certain notification requirements under the Singapore Companies Act. The directors, associate directors and shadow directors must notify the Singapore affiliate in writing of an interest in the Company or any related company (e.g., McAfee Awards) within two business days of (i) its acquisition or disposal, (ii) any change in a previously disclosed interest (e.g., when McAfee Shares are sold) or (iii) becoming a director, associate director or shadow director.

UNITED KINGDOM

Terms and Conditions

Tax Withholding. The following provisions supplement Section 9 of the Agreement:

Without limitation to Section 9, you hereby agree that you are liable for all Tax-Related Items and hereby covenant to pay all such Tax-Related Items, as and when requested by the Company or the Employer, as applicable, or by Her Majesty’s Revenue and Customs (“HMRC”) (or any other tax authority or any other relevant authority). You also hereby agree to indemnify and keep indemnified the Company and the Employer, as applicable, against any Tax-Related Items that they are required to pay or withhold or have paid or will pay on your behalf to HMRC (or any other tax authority or any other relevant authority).
Notwithstanding the foregoing, if you are an executive officer or director of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), you understand that you may not be able to indemnify the Company or the Employer for the amount of Tax-Related Items not collected from or paid by you because the indemnification could be considered to be a loan. In this case, any income tax not collected or paid within ninety (90) days of the end of the U.K. tax year in which an event giving rise to the Tax-Related Items occurs may constitute a benefit to you on which additional income tax and employee national insurance contributions (“NICs”) may be payable. You understand that you will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company and/or the Employer (as appropriate) for the value of employee NICs due on this additional benefit which the Company and/or the Employer may recover from you by any of the means set forth in Section 9 of the Agreement.

Section 431 Election. You agree that you are required, as a condition of the adjustment of your FTW Awards and grant of McAfee Awards, to enter into a joint election with the Employer pursuant to section 431 of Income Tax (Earnings and Pensions) Act 2003 (or such other election as the Company may direct for the same purpose) electing that the fair market value of the McAfee Shares to be acquired upon the conversion of your FTW CRSUs (or upon the future vesting of McAfee Replacement RSUs or McAfee Converted RSUs, which may be granted to you under the Agreement) will be calculated as if they were not “restricted securities.” The issuance of McAfee Shares under the conversion of FTW CRSUs is conditioned upon your entering into the form of section 431 election attached to this Non-U.S. Addendum.
United Kingdom
Section 431 Joint Election Form
Joint Election under s431 ITEPA 2003
for full disapplication of Chapter 2 Income Tax (Earnings and Pensions) Act 2003

One Part Election

1. Between

the Employee
whose National Insurance Number is

and

the Company (who is the Employee’s employer)
of Company Registration Number

2. Purpose of Election

This joint election is made pursuant to section 431(1) Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) and applies where employment-related securities, which are restricted securities by reason of section 423 ITEPA, are acquired.

The effect of an election under section 431(1) is that, for the purposes of income tax and National Insurance contributions (“NICs”), the employment-related securities and their market value will be treated as if they were not restricted securities and that sections 425 to 430 ITEPA do not apply. Additional income tax will be payable as a result of this election (with PAYE withholding and NICs being applicable where the securities are Readily Convertible Assets).

Should the value of the securities fall following the acquisition, it is possible that income tax/NICs that would have arisen because of any future chargeable event (in the absence of an election) would have been less than the income tax/NICs due by reason of this election. Should this be the case, there is no income tax/NICs relief available under Part 7 of ITEPA 2003; nor is it available if the securities acquired are subsequently transferred, forfeited or revert to the original owner.

3. Application

This joint election is made not later than 14 days after the date of acquisition of the securities by the employee and applies to:

<table>
<thead>
<tr>
<th>Number of securities</th>
<th>Shares of Class A Common Stock</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of securities</td>
<td>McAfee Corp.</td>
</tr>
<tr>
<td>Name of issuer of securities</td>
<td></td>
</tr>
</tbody>
</table>

To be acquired by the Employee on or after the date of this Election under the terms of the McAfee 2017 Management Incentive Plan.

4. Extent of Application

This election disapplies S.431(1) ITEPA: All restrictions attaching to the securities.

5. Declaration

This election will become irrevocable upon the later of its signing or the acquisition (and each subsequent acquisition) of employment-related securities to which this election applies.
In signing this joint election, we agree to be bound by its terms as stated above.

Signature (Employee)  Date

Signature (for and on behalf of the Company)  Date

Position in company

Note: Where the election is in respect of multiple acquisitions, prior to the date of any subsequent acquisition of a security it may be revoked by agreement between the employee and employer in respect of that and any later acquisition.
Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated July 14, 2017, in Amendment No. 1 to the Registration Statement (Form S-1) and related Prospectus of McAfee Corp. for the registration of shares of its common stock.

/s/ Ernst & Young LLP
San Jose, California
October 7, 2020
CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Amendment No. 1 to the Registration Statement on Form S-1 of McAfee Corp. of our report dated March 5, 2020, except for the effects of disclosing earnings per unit information discussed in Note 18 to the consolidated financial statements, as to which the date is August 17, 2020, relating to the financial statements of Foundation Technology Worldwide LLC, which appears in this Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

San Jose, California
October 7, 2020